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98th Congress, 1st Session - - - - - - - - House Document No. 98–45

OLDER AMERICANS ACT:

A STAFF SUMMARY

BY THE

SUBCOMMITTEE ON HUMAN SERVICES

OF THE

SELECT COMMITTEE ON AGING

U.S. HOUSE OF REPRESENTATIVES

NINETY-SEVENTH CONGRESS

SECOND SESSION

(Includes the Older Americans Act of 1965 as amended by the 97th Congress)

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FOREWORD

For the past 17 years, the Older Americans Act has been an unqualified success story for the millions of elderly which it serves each year. It is a program born during the "Great Society" of the sixties, having reached full maturity during the past decade and coinciding with the dramatic increase in the elderly population of this Nation.

One of the major reasons why the Older Americans Act has succeeded is due to the development of the "aging network," consisting of State and area agencies on aging, as well as nutrition and other service providers. The "network" functions with great effectiveness in many areas of this Nation helping to ensure that the objectives of the Act are fulfilled for those seniors served by its programs.

The mission of the Older Americans Act is to provide those elderly in the greatest social and economic need with an array of social and human services which will help them maintain their independence and dignity. It is an important element in helping to avoid unnecessary institutionalization for those elderly who can receive services which allow them to function in their homes and in their communities.

Congress has reaffirmed its support for a categorical Older Americans Act on eight occasions and under five different Presidents through passage of various reauthorization bills. It is an Act which has stood up well to the tests of time and scrutiny. It is an Act which must continue.

The Subcommittee wishes to express its appreciation to the numerous people who contributed to this report. Our special thanks is extended to Carol O'Shaughnessy of the Congressional Research Service in the Library of Congress for her invaluable assistance through all phases of this project.

The House Select Committee on Aging and especially the Subcommittee on Human Services has been intimately involved with the Older Americans Act from its genesis and throughout its history. It is because of this special relationship that we present to you our updated Staff Summary of the history and legislative development of the Older Americans Act. We hope that it enhances your appreciation and understanding of its programs and services.

MARIO BIAGGI,
Chairman, Subcommittee on Human Services,
Select Committee on Aging.

H. Res. 98

In the House of Representatives, U. S.,

April 12, 1983.

Resolved, That the revised edition of the committee print of the Subcommittee on Human Services of the Select Committee on Aging entitled "Older Americans Act: A Staff Summary" shall be printed as a House document.

SEC. 2. In addition to the usual number, there shall be printed two thousand two hundred copies of such document for the use of the Select Committee on Aging.

Attest:

Clerk.

FOREWORD

Each year, more and more Americans reach the age of 65. For many of these senior citizens, acquiring the most basic needs of food and shelter is an arduous and financially draining endeavor. Too often, the elderly find themselves alone, destitute, and neglected. When these older Americans are no longer able to maintain the comfortable, dignified way of life which they deserve, the Government has an essential moral obligation to assist them.

For this reason, Congress established the Older Americans Act in 1965, and it has since become the primary social services program for the elderly, with projects as diverse as the National Nutrition Program, multipurpose senior citizen centers, and community service employment efforts. Presently, the Older Americans Act has a dramatic impact on the lives of thousands of elderly citizens every day.

The committee is reprinting the Older Americans Act at this time because of the extensive and significant changes made by Congress in the last few years. These amendments have served both to improve coordination of the multitude of existing programs on the local, State, and national level, and to implement new programs. It is my belief that the numerous alterations to the Older Americans Act demonstrate Congress' sustained interest in the needs and desires of the American elderly.

I hope this booklet will alert Government officials, interested citizens, and older Americans to the many programs available to the aged. I hope, too, that government at all levels will continue attempts to ease the lives of this Nation's elderly, the most vulnerable and rapidly increasing segment of our population.

CLAUDE PEPPER,
Chairman, House Select Committee on Aging.

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THE OLDER AMERICANS ACT OF 1965, AS AMENDED: A SUMMARY

Overview

Congress established the Older Americans Act of 1965 in response to the lack of community social services for older persons. Several subsequent amendments to the act, the latest of which were enacted in December of 1981, expanded programs created in 1965, and created new programs, including methods for coordinating the numerous social and health care services that have been developed incrementally over the past 17 years.

The Federal dollars appropriated under the Older Americans Act have grown from $6.5 million in fiscal year 1966 to $914 million in fiscal year 1982. Today, the act authorizes grants for social services, nutrition services, multipurpose senior center facilities, training, research and demonstration activities, and public service employment projects.

Legislative Development

Prior to the enactment of the Older Americans Act in 1965, older persons were eligible for federally funded social services under general purpose legislation serving all persons meeting the specified eligibility criteria. With the recognition that limited resources could not help all those who were vulnerable, and that older people were being served disproportionately less than younger persons, many groups started advocating on behalf of the elderly. Their actions led President Truman in 1950 to initiate the first National Conference on Aging. Conferees called for all Government and voluntary agencies to accept greater reponsibility for the problems and welfare of older people. Further interest in the field of aging led President Eisenhower in 1956 to create the Federal Council on Aging and take steps toward the development of the White House Conference on Aging.

The beginning of a major thrust toward legislation along the lines of the later-enacted Older Americans Act was made at the 1961 White House Conference on Aging. Conferees called for a Federal coordinating agency in the field of aging to be set up on a statutory basis, with adequate funds for coordinating Federal efforts in aging and a Federal program of grants for social services specifically for the elderly.[1]

In response to the White House Conference on Aging, Representative John Fogarty of Rhode Island and Senator Pat McNamara of Michigan introduced legislation in 1962 for the establishment of an independent U.S. Commission on Aging to "cut across

[1] U.S. Department of Health, Education, and Welfare. The Nation and Its People. Report of the White House Conference on Aging. Jan. 9-12, 1961: 278-280.

the responsibilities of many departments and agencies," and a program of grants for social services, research and training.[2] Since the Administration basically objected to an independent agency on aging, separate and apart from any other agency, the legislation was not passed. Legislation introduced the following year would have modified the 1962 proposal by creating within the Department of Health, Education, and Welfare an agency equal in stature to the Department's other major agencies. Due to unrelated reasons, the 1963 proposal also was not passed.

The Older Americans Act proposal introduced in 1965, however, basically paralleled the proposed Older Americans Act of 1963. Sponsors emphasized how it would provide resources necessary for public and private social service providers to meet the social service needs of the elderly. After virtually no debate, the act was passed by Congress and signed into law on July 14, 1965 by President Johnson. The President hailed it as landmark legislation and expressed that the Older Americans Act "clearly affirms our Nation's high sense of responsibility toward the well-being of older citizens." He further confirmed that under the Act, ". . . every State and every community can move toward a coordinated program of both services and opportunities for older citizens."[3]

The Older Americans Act of 1965 provided services and programs for older persons through programs of grants for: (1) social services, (2) research and demonstration projects, and (3) personnel training in the field of aging. It also established the Administration on Aging in the Department of Health, Education, and Welfare to administer these grant programs and serve as a Federal focal point for matters concerning older people.

The Older Americans Act Amendments of 1967 and 1969 extended each of the 1965 provisions. Amendments in 1969 also mandated statewide planning for services, and added a program of grants for areawide model demonstration projects as well as the foster grandparent and retired senior volunteer programs.[4]

The 1972 amendments authorized a national nutrition program for the elderly for developing primarily congregate meal projects but also, when possible, home-delivered meals programs.

With the enactment of the 1973 amendments the program of grants for social services was revised to strengthen statewide planning as well as initiate local planning efforts through area agencies on aging. The 1973 amendments also created a National Information and Resource Clearinghouse, and a new Federal Council on Aging. In addition, the 1973 amendments authorized grants for multipurpose senior center facilities, and created a program of grants for community service employment for persons age 55 and older to be administered by the Department of Labor.

Amendments in 1974 basically extended the national nutrition program for the elderly while the 1975 amendments extended existing programs and established four priority social services. Amend-

[2] U.S. Congressional Record. House of Representatives. Jan. 29, 1962: 1371; U.S. Senate. May 17, 1962: 3324.

[3] Remarks by President Johnson upon signing the Older Americans Act, July 14, 1965.

[4] Statutory authority for volunteer programs was repealed in 1973 and reauthorized under the Domestic Service Volunteer Act of 1973. These programs currently are administered by ACTION.

ments in 1977 required changes in the nutrition program primarily relating to surplus commodities.

The 1978 amendments again significantly revised the structure of the social services titles under the Act with the intention of improving coordination and efficiency at the local level. They placed the grant programs for social services, multipurpose senior center facilities, and nutrition projects under the State and area agency on aging administrative structure, but retained a separate funding authorization for social services and the nutrition program. Grants for multipurpose senior center facilities were funded through the State's social services allotment.

The 1981 amendments clearly reaffirmed the status of the Older Americans Act as a categorical grant program. It expanded flexibility for both State and area agencies on aging in administering programs. Despite efforts to consolidate the funding of title III, separate funding was maintained for"Senior centers and supportive services," (Part B), "Congregate Nutrition Services" (Part C (1)) and "Home-Delivered Nutrition Services" (Part C (2)) respectively. Grants for mulitpurpose senior center facilities continue to be funded through the State's social services allotment under Title III B.

The statutes establishing and amending the Older Americans Act are as follows:

The Older Americans Act of 1965—signed into law July 14, 1965 as Public Law 89-73.

The Older Americans Act of 1967—enacted July 1, 1967 as Public Law 90-42.

The Older Americans Act Amendments of 1969—enacted September 17, 1969 as Public Law 91-69.

The Nutrition Program for the Elderly Act—enacted March 22, 1972 as Public Law 92-258.

The Older Americans Comprehensive Services Amendments of 1973—enacted May 3, 1973 as Public Law 93-29.

Amendments to the Nutrition Program for the Elderly Act—enacted July 12, 1974 as Public Law 93-351.

The Older Americans Act of 1975—enacted November 28, 1975 as Public Law 94-135.

The 1977 Older Americans Act of 1975—enacted July 11, 1977 as Public Law 95-65.

The Comprehensive Older Americans Act Amendments of 1978—enacted October 18, 1978 as Public Law 95-478.

The Older Americans Act Amendments of 1981—enacted December 29, 1981 as Public Law 97-115.

The Older Americans Act contains six titles:

—*Title I* sets out ten policy goals aimed at improving the lives of older Americans across a number of areas including income, health, housing, employment, retirement, and community services.

—*Title II* provides the legislative basis for the creation of the Administration on Aging within the Office of the Secretary of the Department of Health and Human Services and establishes the Federal Council on the Aging.

—*Title III* the largest program under the Act, establishes authority for development of programs to assist older persons (especially those with the greatest social or economic needs) through grants to States, which in turn award funds to area agencies on aging for community planning, supportive, and senior center services, and nutrition services.

—*Title IV* provides authority for development and support of training, research and demonstration programs in the field of aging.

—*Title V* establishes authority for development of community service employment programs for unemployed low income persons 55 years and over

—*Title VI* establishes authority for grants to Indian tribal organizations for the development of social and nutritional services for elderly Indians.[5]

The following is a summary of the major provisions and legislative developments of each title under the Act.

[5] The Older Americans Act of 1965, as amended (42 United States Code 3001 et seq.).

TITLE I—DECLARATION OF OBJECTIVES

The Older Americans Act is directed toward assisting older persons to attain full participation in the benefits of this Nation. In keeping with this goal, the Act directs the Governments of the United States, the various States and Territories, and political subdivisions to assist older persons in securing 10 objectives. These objectives are: (1) an adequate income in retirement; (2) the best possible physical and mental health; (3) suitable housing designed and located to meet special needs; (4) full restorative services for those who require institutional care; (5) opportunity for employment without age discrimination; (6) retirement in health, honor, and dignity; (7) pursuit of civic, cultural, education and training,[1] recreational opportunities; (8) efficient community services; (9) benefits from research designed to sustain and improve health and happiness; and (10) freedom to plan and manage their lives.

[1] *Goals of Education and Training* added as part of the 1981 amendments to the Act, P.L. 97-5 (42 United States Code 3001).

TITLE II—ADMINISTRATION ON AGING

Functions and Organizational Status of the Administration on Aging

Title II establishes the Administration on Aging within the Office of the Secretary of the Department of Health and Human Services (DHHS), under the direction of the Commissioner on Aging. The Act requires that the Commissioner be directly responsible to the Office of the Secretary and prohibits the Secretary from approving the delegation of any functions of the Commissioner to any officer not directly responsible to the Commissioner.

Since conception of the Administration on Aging in 1962, its appropriate placement within the Federal framework has been questioned. The original sponsors conceived of placing such an agency at the White House level so it would not be subordinate to any one agency or department, but an independent agency able to carry out its interdepartmental functions. This placement, however, was strongly opposed by officials of the executive branch, therefore, the sponsors turned to a compromise position to expedite passage of the act.[1] The Administration on Aging was placed within the Department of Health, Education, and Welfare in 1965 and did not have independent status.

Over the years, many policymakers have questioned whether the Administration on Aging can carry out its interdepartmental functions and serve as a Federal coordinator, spokesman, and advocate for the elderly as well as impact on Federal programs and policies when it is placed within a Federal department.

During consideration of the 1978 amendments, discussion continued about the appropriate placement of the Administration on Aging. Sentiment ranged from placing the Administration as an independent office at the White House level to retaining the agency in its current position. The amendments, however, did not change prior law and retained the agency within the Office of Human Development Services (OHDS) where it currently is located. In support of this placement, the 1978 Senate bill report stated that:

> The committee believes that there is some benefit in having the Commissioner on Aging within OHDS for purposes of coordinating programs under the Administration on Aging with those programs administered by the Public Services Administration, the Developmental Disabilities Office, the Office of Child Development, the Office of Youth Development, and the Rehabilitation Services Administration. The committee believes that bringing these programs together fosters increased coordination and cooperation, and gives the Commissioner on Aging greater insight into overall policy development and program interface. Thus, while no new action with respect to AOA's placement in OHDS was taken in connection with this bill, it is a matter of continuing interest to the committee.[2]

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[1] U.S. House. Committee on Education and Labor. Hearings on Administration on Aging, H.R. 7957 and Similar Bills. 88th Congress, 1st session, Sept. 17, 1963: 16.

[2] U.S. Senate. Committee on Human Resources. Older Americans Act Amendments of 1978. Committee Rep. No. 95-855. May 15, 1978: 5.

The conference committee considering the 1978 Amendments retained the existing placement language, but noted that Congress will closely monitor the power and recognition afforded the Commissioner on Aging and his or her ability to serve as a focal point for all Federal programs for the aging from this present organizational position.[3]

Again in 1981 considerable discussion developed about the proper placement of the position of the Commissioner on Aging. The House-passed bill made the Commissioner report directly to the Secretary of Health and Human Services, as compared to the Office of the Secretary. In addition, existing prohibitions against delegating any powers of the Commissioner to any other "officer not directly responsible to the Commissioner" were strengthened. Another proposal given consideration, but ultimately not adopted, sought to grant the Administration on Aging control over its own salaries and expense budget.

The Conference agreement retained the existing structure of the Department of Health and Human Services with respect to the position of the Commissioner and expanded the functions of the position by changing the heading of Section 202 from "Functions of the Administration on Aging" to "Functions of the Commissioner." This modification makes these new functions subject to the restrictions contained in Section 201 which bars the delegation of any function of the Commissioner to any officer not directly responsible to the Commissioner.[4]

The Act sets out a number of specific functions of the Commissioner, including the following:

—Serve as the effective and visible advocate for the elderly within DHHS and with other departments or agencies of the Federal Government by maintaining active review and comment responsibilities on all Federal policies affecting the elderly;

—Advise the Secretary on problems related to aging;

—Conduct research in the field of aging and provide technical assistance to States and other political subdivisions regarding programs on aging;

—Conduct a variety of activities relating to information preparation and dissemination, including the preparation and dissemination of educational materials related to the welfare of older persons; gathering statistics on aging not otherwise collected; coordination of information activities of other departments or agencies of the Federal Government; and provision of information and assistance to private organizations relative to their activities for older persons;

—Stimulate more effective use of existing resources and available services for older persons;

—Develop policies and set priorities related to programs and activities under the Act;

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[3] U.S. House. Committee of Conference. Comprehensive Older Americans Act Amendments of 1978, Rep. No. 95-1618. Sept. 22, 1978: 54.

[4] U.S. Senate. Committee on Conference. Older Americans Act Amendments of 1981. Rept. No. 97-293. Dec. 10, 1981: 19.

—Provide for the coordination of Federal programs related to the purposes of the Act and other publicly and privately supported programs for older persons;
—Convene conferences and conduct evaluations of programs related to the purposes of the Act, with particular emphasis on Medicare, Medicaid, the National Housing Act, and the Age Discrimination in Employment Act;
—Develop and operate programs not otherwise provided by existing programs; and
—Develop and conduct activities related to training programs.

The Commissioner is also specifically directed to strengthen AoA's involvement in policy alternatives in long term care and to assure that the development of community alternatives is given priority attention. In addition to other responsibilities, the Commissioner is required to advise, consult, and cooperate with the heads of Federal agencies or departments proposing or administering programs or services related to purposes of the Act. The Commissioner is also required to prepare and transmit to Congress an annual report on activities carried out under the Act.

Evaluation Activities

This title requires the Secretary of DHHS to conduct evaluation activities of all programs authorized by the Act, including their effectiveness in achieving goals. The Secretary is authorized to use up to 1 percent of funds appropriated under the Act, or $1 million, whichever is greater, to conduct evaluation activities as required under title II.

National Information and Resource Clearing House For The Aging

The National Information and Resource Clearing House for the Aging, created by the 1973 amendments to the Act to serve as a resource and dissemination point for information affecting programs and policies on aging, was eliminated by the 1981 amendments to the Act. Both the House Education and Labor Committee and the Senate Labor and Human Resources Committee proposed the elimination of the separate authorization for this program. In its report the House Committee stated that the Clearing House "had, over recent years evolved into little more than a computerized bibliographic reference system useful primarily to academicians, and not so much to them since it was reported that the system failed to function during most of 1980 at a cost of about $2,000,000 per year." [5] The Senate Labor and Human Resources Committee indicated that the Clearing House "throughout most of its existence has been an ineffective vehicle for collecting and disseminating information and materials on aging" and its history does not justify a separate authorization.[6] In its place the 1981 amendments adopted an amendment requiring that the Commissioner take whatever action is necessary to achieve coordination of

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[5] U.S. Congress. House. Committee on Education and Labor. Older Americans Act Amendments of 1981. Report No. 97-70, 97th Congress, 1st session, May 19, 1981. pp. 8-9.
[6] U.S. Congress. Senate. Committee on Labor and Human Resources. Senate Document No. 97-159, 97th Congress, 1st session, July 20, 1981. pp. 5-6.

Federal activities related to collection, preparation, and dissemination of information relevant to older persons.

Federal Council on the Aging

The 1973 amendments authorized the establishment of a Federal Council on the Aging to consist of 15 members appointed by the President, with the advice and consent of the Senate, for terms of 3 years. The duties of the Council include advising the President on the needs of older Americans and assisting the Commissioner in appraising the need for personnel in the field of aging. In addition to advising the President and the Commissioner, the Federal Council on the Aging has other duties including: review and evaluation of policy and programs affecting older people; serving as a spokesman for the elderly; and informing the public and providing forums on the needs of older persons. Not later than March 31 of each year, the Council is required to submit a report on its findings and recommendations to the President, who is required to furnish a copy to Congress.

H. Doc. 98-45 0 - 83 - 2

TITLE III—GRANTS FOR STATE AND COMMUNITY PROGRAMS ON AGING

DEVELOPMENT OF THE STATE AND AREA AGENCY ON AGING STRUCTURE

Since original passage of the Act in 1965, the title III program has evolved from a funding source for social service programs to a planning vehicle for development of a comprehensive and coordinated service system for older persons.

In 1965, title III authorized Federal grants to State agencies on aging to directly fund social service programs serving the elderly. State agencies acted as dispensers of Federal funds rather than service planners, and some tended to dispense limited resources thinly over too many services and duplicate efforts of other public agencies. As a result, Congress revised the program in 1969 to give State agencies reponsibility and funding for Statewide planning, coordination and evaluation of programs which serve the elderly and to foster State leadership toward achieving cooperation of all agencies and organizations concerned with the needs of the elderly. Congress continued the authorization of funds for social service programs but also provided separate authorization of funds for State agency administration for the first time.

The 1973 amendments significantly restructured the title III program in order to improve the planning and organization of services for older persons at the State and local levels. State agencies on aging were required to divide the State into geographic areas, or planning and service areas, and establish area agencies on aging for the purpose of developing areawide social service delivery systems for older persons. Both State and area agencies on aging were directed to provide leadership in identifying gaps and weaknesses in the delivery of services as well as to foster the expansion of service programs. These amendments emphasized the need for more effective planning and coordination of existing service programs, and continued authorization of funds for the creation of new services where they did not currently exist. Area agencies were generally not to directly provide services. The report of the Senate Committee on Labor and Human Resources stated:

> It is not intended that the area agencies on aging shall be primary providers of services. In many communities existing organizations may already be engaged in providing services and the entry of the area agencies into the position of providing services is likely to result in duplication and overlap. Their primary concern must be to coordinate existing services and to stimulate the expansion of such services and the introduction of new services by other providers. State and area agencies alike are authorized to provide services, though, when it is determined, in the judgment of the State agencies, that such action is necessary to assure an adequate supply of services.[1]

[1] U.S. Senate. Committee on Labor and Public Welfare. The Older Americans Comprehensive Services Amdendments of 1973. Rept. 93-19. Feb. 14, 1973. p. 9.

As a result of subsequent amendments to the Act in 1978, the title III program, in addition to its authority to fund social services, has incorporated two other major service programs—nutrition services and multipurpose senior centers. Authorization for nutrition services preceded the establishment of area agencies on aging, when, in 1972, Congress enacted the National Nutrition Program for the Elderly as title VII of the Act. The nutrition services program, which was administered by State agencies on aging, evolved from nutrition demonstration projects first funded under the Older Americans Act in 1968 with the purpose of developing techniques for improving diets, fostering social interaction, and facilitating the delivery of social services to older persons. Aspects of these demonstration projects were incorporated into a new title VII. The statute set out the findings and the purpose of the new legislation, as follows:

> Many elderly persons do not eat adequately because (1) they cannot afford to do so; (2) they lack the skills to select and prepare nourishing and well-balanced meals; (3) they have limited mobility which may impair their capacity to shop and cook for themselves; and (4) they have feelings of rejection and loneliness which obliterate the incentive necessary to prepare and eat a meal alone. These and other physiological, psychological, social, and economic changes that occur with aging result in a pattern of living, which causes malnutrition and further physical and mental deterioration.
>
> . . . there is an acute need for national policy which provides older Americans, particularly those with low incomes, with low cost, nutritionally sound meals served in strategically located centers such as schools, churches, community centers, senior citizen centers, and other public or private nonprofit institutions where they can obtain other social and rehabilitative services. Besides promoting better health among the older segment of our population through improved nutrition, such a program would reduce the isolation of old age, offering older Americans an opportunity to live their remaining years in dignity.[2]

Funds were allocated to States based on their proportionate share of the Nation's population aged 60 and over.

Authorization of funds for multipurpose senior centers was added as title V of the Act in 1973. Grants to carry out this program were made directly by the Commissioner on Aging; the first appropriations for this purpose were not made available until 1977.

The 1978 amendments represented a major change in the structure of the aging network programs at the State and local levels when the separately authorized social services, nutrition services, and senior center programs were combined in one title and administrative structure under title III. At the time, title III social services were funded through area agencies, title VII nutrition services were funded through area agencies on aging or directly by State agencies on aging, and title V senior center grants were awarded directly by the Commissioner on Aging. The consolidation of these separate titles into one title was intended to foster greater coordination among the Older Americans Act programs with area agencies on aging responsible for managing funds for social, nutrition, and senior centers within their respective communities. It was assumed that consolidation of the service programs would increase the visibility and significance of area agencies' scope of operations as well as improve coordination among the service components under the Act. These amendments provided three separate authori-

[2] Public Law 92-258, sec. 701.

zations of appropriations—for social services (including multipurpose senior centers), congregate nutrition services, and home-delivered nutrition services.

Separate authorizations of appropriations for these service programs were retained in passage of the 1981 amendments. Previous restrictions that barred recipients of grants or contracts under the Act from entering into service agreements with profit-making organizations were removed. Prior to the 1981 amendments, for-profit organizations could only receive title III grants or contracts if they could demonstrate clear superiority with respect to the quality of services delivered.

The 1981 amendments again restated the policy with respect to the voluntary nature of contributions asked of participants in title III-funded programs. The Senate-passed bill had included a provision under which nutrition service providers could establish suggested scales for participant contributions but this language was deleted in Conference. However, the 1981 amendment did expand the permissible uses of income derived from contributions. Now, contributions may be used not only to expand existing meals programs but also "to facilitate access to such meals and to provide other supportive services directly related to nutrition services." [3]

In fiscal year 1981, there were approximately 674 area agencies on aging, 7,926 social service providers, 12,915 congregate nutrition service sites, and 3,323 home-delivered meals providers supported through title III. Approximately 8.9 million older persons were social service participants. Congregate nutrition services participants totalled over 2.8 million, and home-delivered meals participants numbered .6 million persons. Over 120 million congregate and almost 35 million home-delivered meals were served with title III funds solely.[4]

Priority to Specified Groups and Services

The 1973 amendments to the Act required that, in dividing the State into geographic planning and service areas, State agencies were to give special consideration to the needs of low-income elderly. The Senate report accompanying the 1973 amendments indicated that it was not the intent to impose income as the determining factor in eligibility for the comprehensive and coordinated services provided under title III. However, the report stated that in view of the fact that many older persons have income below the poverty threshold, and until services are available to all older persons, States were to give special consideration to low-income older persons when planning for services in the State. The prohibition on using income as a factor for title III participation has not changed with passage of subsequent amendments to the Act. In the 1978 amendments, a provision was added requiring State and area agencies to provide assurances that in providing services, preference be given to older persons with the greatest economic or social needs.

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[3] U.S. Congress. Conference Committee, 1978. Older Americans Act Amendments of 1981. Conference report to accompany S. 1086. S. Rept. 97-293, 97th Congress, 1st session. Washington, U.S. Government Printing Office, 1981. p. 27.

[4] Administration on Aging. Office of Program Operations. Summary of Program Performance, fiscal year 1981. February 1982.

The conference report reiterated that the inclusion of this provision is not to be interpreted as a step toward requiring a means test under the Act.[5]

The 1973 amendments provided that area agencies were to determine the need for individual social services within their planning and service areas and use their funds to provide services not available through other resources. The determination of the kinds of services to be provided was left to local discretion. With the passage of the 1975 amendments, Congress placed priority on certain services in order to concentrate Older Americans Act resources in areas of apparent greatest need. These amendments required the expenditure of a specified proportion of the States' funds for transportation, home care, legal services, and home renovation and repair if such services were not already sufficiently provided for in the State. The issue of concentrating title III resources on certain priority services was again reviewed during the 1978 and 1981 amendment processes. The 1978 amendments required that each area agency spend at least 50 percent of its social services allotment on access, in-home, and legal services. The Senate Committee on Labor and Human Resources was concerned at the time that "there should be a concentrated effort to better meet the most crucial needs of the elderly" and, despite the 1975 requirement that funds under the program be directed at certain services the Committee found that "very few services are provided in-depth in local communities. Rather, there appears to be a scatter-gun attempt to provide a wide array of services, none of which adequately serves the needs of the elderly in the community."[6] The 1981 amendments retained priority under the program for access, in-home, and legal services, but changed the prior law requirement for expenditure of a specified amount on these services. The law now requires that each area spend an "adequate portion" of its social services allotment on these priority services. The report of the Conference Committee on the 1981 amendments stated:

> The deletion of the existing requirement that 50 percent of an area agency's funds be spent on the three priority supportive services reflects the managers recognition that the strict percentage requirement reduced local flexibility and created administrative difficulties. However, the managers emphasize that the new requirement that an "adequate portion" of each area agency's supportive service allotment be spent on the three priority services is not intended to reduce support for the priority services or to allow funding of these services that is de minimus.[7]

Major Provisions

Title III authorizes grants to State agencies on aging to develop a comprehensive and coordinated delivery system for supportive serv-

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[5] U.S. Congress. Senate. Older Americans Comprehensive Services Amendments of 1973. Senate Document No. 93-19, 93d Congress, 1st session. Washington, U.S. Government Printing Office, 1973. pp. 12-13.

U.S. Congress. Conference Committee, 1978. Comprehensive Older Americans Act Amendments of 1978. Conference report to accompany H.R. 12255. S. Rep. 95-1236, 95th Congress, 2d session. Washington, U.S. Government Printing Office, 1978. p. 69.

[6] U.S. Congress. Committee on Labor and Human Resources. Older Americans Act Amendments of 1978. S. Rep. 95-855, 95th Congress. Washington, U.S. Government Printing Office, 1978. p. 10.

[7] U.S. Congress. Conference Committees, 1981. Older Americans Act Amendments of 1981. Conference Report to accompany S. 1086. S. Rep. 97-293, 97th Congress, 1st session. U.S. Government Printing Office, 1981. p. 25.

ices, nutrition services and multipurpose senior centers for older persons. This system is intended to assist them attain maximum independence in a home environment, to remove individual and social barriers to economic and personal independence, and to provide services and care for the vulnerable elderly.

STATE AND AREA AGENCY ON AGING RESPONSIBILITIES

In order to be eligible for funds under title III each State is required to designate a State agency on aging which is responsible for developing a State plan on aging to be administered within the State. As part of its responsibilities, the State agency is required to divide the State into planning and service areas and to designate area agencies on aging which are responsible for community planning and developing supportive, nutrition, and senior center services within their planning and service areas. Both State and area agencies are required to develop plans on aging, on a 2-, 3-, or 4-year basis as determined by the State agency, which comply with requirements set forth by law and regulation. The title III organization structure is intended to form a "network on aging" linking AoA, State and area agencies on aging, other public and private agencies, and social and nutrition service providers.

In designating planning and service areas within the State, the State agency must consider: the geographic distribution of persons aged 60 and over and those with low income; the areawide need for supportive and nutrition services, multipurpose senior centers and legal services; existing boundaries designated for the planning and administration of other supportive services programs; and the location of units of general purpose local government within the State. A State may designate as a planning and service area any unit of general purpose local government which represents a population of 100,000 or more. Upon approval of the Commissioner, planning and service areas may cross State boundaries, including instances in which an Indian reservation is located across State boundaries. Indian reservations may constitute a separate planning and service area.

The law requires that in designating an area agency on aging within the planning and service area, the State agency shall give preference to an established office on aging unless such agency does not have the capacity to carry out the area plan. Other agencies specified by law for designation as area agencies are: offices of general purpose local government or any combination of units of general purpose local government designated by elected officials, and any other public or nonprofit agencies which can conduct planning activities and provide services supported by title III. Under certain conditions the entire State may constitute a single planning and service area with the State agency on aging operating as the area agency.

Among other State agency responsibilities specified by law are the following:

—Be primarily responsible for the coordination of all State activities related to the purpose of the Act;

—Serve as an effective and visible advocate for the elderly by reviewing and commenting upon all State plans, budgets, and policies affecting the elderly;
—Provide assurances that, in the provision of services to older persons, preference will be given to those with the greatest economic or social needs;
—Evaluate the need for services within the State and determine the extent to which existing public or private programs meet identified need;
—Review and approve area plans on aging in accordance with provisions set forth by the law;
—Conduct periodic evaluation of the activities and projects carried out under the State plan on aging;
—Establish and maintain information and referral services;
—Provide that no supportive services, including nutrition services, will be directly furnished by the State or area agency except when it is necessary to assure an adequate supply of such services;
—Assure that special outreach and counseling services are provided to assist older persons of limited English-speaking ability if a substantial number of such individuals reside within the planning and service area;
—Develop and publish a formula for the distribution of title III funds within the State; and
—provide that area agencies have authority to enter into grants and contracts with providers of education and training services.

Area agencies on aging are responsible for the administration of title III funds within their planning and service areas. In developing the area plan, the area agencies are required to determine the extent of need for supportive and nutrition services and multipurpose senior centers, and to evaluate the effectiveness of existing resources to meet these needs.

Among other responsibilities of the area agency are the following:

—Designate a community focal point for the delivery of services in order to assure the maximum coordination of services;
—Assure that services will be focused on older persons with the greatest economic or social needs;
—Provide for the establishment and maintenance of information and referral services in sufficient numbers to assure that older persons in the planning and service area have reasonably convenient access to such services and assure the use of outreach services to identify individuals in need of services, with special emphasis on rural elderly;
—Conduct periodic evaluation of activities carried out under the area plan and establish procedures for the coordination of services provided under title III and other programs;
—Furnish technical assistance to providers of service;
—Serve as an advocate and focal point for the elderly within the community by monitoring, evaluating, and commenting on all policies, programs, hearings, and other activities affecting the elderly;
—Establish an advisory council to the area agency; and

—Develop and publish methods to determine priority of services.

SUPPORTIVE SERVICES AND SENIOR CENTERS

Under part B of title III, State agencies are allotted funds for supportive services and senior centers which they, in turn, award to area agencies on aging. Area agencies are responsible for administering these funds within their planning and service areas in accordance with an area plan approved by the State. A broad range of supportive services is authorized under part B; however, area agencies are required to provide assurances that an adequate proportion of part B funds will be expended on the delivery of access services (transportation, outreach, and information and referral); in-home services (homemaker and home health aide, visiting and telephone reassurance, and chore maintenance services); and legal services. Each area agency must expend some of its funds in each of these categories of service. Other services which area agencies are authorized to support include:

—Acquisition, alteration, or renovation of existing facilities to serve as multipurpose senior centers. Construction of new facilities to be used for this purpose is allowable in areas where no other suitable structures are available;
—Health, education and training, welfare, informational, recreational, homemaker, counseling or referral services;
—Housing services, including residential repair and renovation, adaptation of homes for those with disabilities, and services designed to prevent unlawful entry into residences;
—Services designed to avoid institutionalization;
—Health screening;
—Preretirement and second career counseling;
—Employment services such as job counseling and development, referral and placement;
—Crime prevention and victim assistance programs; and
—"Senior Opportunities and Services," designed to identify and meet the needs of older, poor individuals (a program which was previously authorized under the Commmunity Services Act).

CONGREGATE AND HOME-DELIVERED NUTRITION SERVICES

Under part C of title III, State agencies are allotted funds for the operation of congregate nutrition services (authorized under part C-1 of title III) and home-delivered nutrition services (authorized under part C-2 of title III). Nutrition services are available to individuals aged 60 and over and their spouses of any age, and to handicapped or disabled persons under 60 years of age who reside in housing facilities where congregate meals are served and which are primarily occupied by elderly persons. Area agencies on aging are permitted to establish procedures which will allow nutrition project administrators to offer a meal, on the same basis as meals provided to elderly participants, to individuals providing volunteer services during meal hours.

Congregate meals are served in group settings such as senior centers, schools, churches, or other community settings. Congregate nutrition projects are required to serve at least one hot or other appropriate meal per day, five days a week, and may serve addi-

tional meals. Each meal must assure participants a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council. Nutrition projects may provide nutrition education services and other appropriate nutrition services.

Home-delivered meal projects must serve at least one hot, cold, frozen, dried, canned, or supplemental food meal per day, five or more days a week, and may serve additional meals. Like congregate meals, home-delivered meals must meet the requirements for the one-third daily recommended dietary allowances.

State plans on aging are required to assure that nutrition projects meet certain requirements contained in the law such as:

—Permitting recipients of nutrition project funds to allow older persons to contribute toward the cost of the meals furnished. Income collected is to be used to increase the number of meals served by the project, to facilitate access to meals and to provide other supportive services directly related to nutrition services;

—Establishing congregate meal sites in close proximity to the residences of a majority of participants as feasible;

—Establishing outreach activities to assure that the maximum number of persons will have an opportunity to participate; and

—Providing special menus to meet special dietary needs, religious requirements, or ethnic background of participants.

LONG-TERM CARE OMBUDSMAN PROGRAM

State agencies on aging are required to use not less than 1 percent of funds allotted for supportive services, or $20,000, whichever is greater, for the establishment and operation of a long-term care ombudsman program. This provision is not applicable in any year in which the State spends an equal amount of funds for the ombudsman program from other sources.

Among the State's responsibilities under this program are: to investigate and resolve complaints made by or on behalf of residents of long-term care facilities which may adversely affect their health, safety, welfare, and rights; to monitor the development and implementation of laws, regulations and policies affecting long-term care facilities; and to provide volunteer training and promote the development of citizen participation in the program. The State must establish procedures for access to facilities and their patient records and a system to analyze data relating to patient complaints.

The State agency may conduct these activities either directly or by contract with any public agency or private nonprofit organization not responsible for licensing or certifying long term care services in the State, or not an association of long term care facilities. In 1981, the definition of "long-term care facilities" was expanded to include boarding home facilities.

U.S. DEPARTMENT OF AGRICULTURE COMMODITY PROGRAM

Under section 311 of the Act, the U.S. Department of Agriculture (USDA) is mandated to provide commodities, or cash in lieu of commodities, to supplement the costs of providing meals through the

title III meals program. State agencies on aging receive from USDA an annually programmed level of assistance that is based on the number of meals served with title III funds. The USDA reimbursement is provided on a per meal basis in an amount adjusted for inflation to reflect changes in the Consumer Price Index for Food Away from Home (for FY 1982 set at 51.5 cents per meal). A State may elect to receive this assistance either in the form of donated commodities or the cash equivalent of the commodities.

A fixed amount for the USDA reimbursement is authorized under the law ($93.2 million in FY 1982; $100 million in FY 1983; and $105 million in FY 1984) and additional sums necessary to maintain the level of reimbursement for the number of meals served in 1981. The law provides that for any year in which the amount necessary to comply with the reimbursement per meal provisions exceeds the authorized amounts, the Secretary of Agriculture is required to reduce the cents per meal level for that fiscal year in order not to exceed the authorization of appropriations.

ALLOTMENT OF FUNDS

The law provides for four separate allotments to States: for State agency administration; supportive services and senior centers (including area agency administration); congregate nutrition services; and home-delivered nutrition services. Funds for multipurpose senior centers and the long term care ombudsman program are apportioned as part of the supportive services and senior center allotments under title III-B. States and area agencies may determine appropriate amounts from this allotment to be used for senior centers. States are required to allocate a portion of funds, as discussed above, for the long term care ombudsman program.

State administration.—Funds appropriated for State administration are allocated on the basis of each State's proportionate share of the Nation's population aged 60 and over. The law requires each State to receive at least one-half of 1 percent of the annual appropriation, or $300,000, whichever is greater. Guam, American Samoa, the Virgin Islands, the Trust Territories of the Pacific Islands, and the Northern Mariana Islands are to receive at least one-fourth of 1 percent of the annual appropriation or $75,000, whichever is greater. The State may use its allotment to pay up to 75 percent of the cost of developing and administering its State plan on aging.

Supportive services and centers; nutrition services; area agency on aging administration.—Funds appropriated for supportive services and centers and nutrition services are allotted to States on the basis of the State's proportionate share of the Nation's population aged 60 and over, except that no State shall be allotted less than one-half of 1 percent of the annual appropriation or shall be allotted an amount less than it received for FY 1978. Guam, the Virgin Islands, and the Trust Territories of the Pacific Islands are not to be allotted less than one-fourth of 1 percent of the annual appropriation; American Samoa and the Northern Mariana Islands are not to be allotted less than one-sixteenth of 1 percent of the annual appropriation.

Other provisions relative to funding include the following:

—Not more than 8.5 percent of the State's allotment for supportive services and nutrition services may be used for paying (up to 75 percent) the cost of area plan administration.
—Funds allocated to States for supportive services and centers and nutrition services may be used to pay up to 85 percent of the cost of services.
—States may elect to transfer funds appropriated for congregate nutrition services and home delivered nutrition services between these two separate allotments.
—States may elect to transfer not more than 20 percent of funds appropriated for any fiscal year between the separate allotments for supportive services and centers and nutrition services. States must notify the Commissioner if they choose to transfer funds in this manner.

The following charts represent title III funding and selected program data, by State.

PROGRAM DATA

TITLE III—ALLOTMENTS BY STATE: FISCAL YEAR 1982

State	Population 60-plus distribution factor	Part A State administration	Part B supportive services and service centers	Part C-1 congregate meals	Part C-2 home delivered meals
Alabama	1.69018	300,000	3,899,468	4,613,477	922,699
Alaska	.05447	300,000	1,199,732	1,419,408	283,883
Arizona	1.19629	300,000	2,759,986	3,265,351	653,072
Arkansas	1.17296	300,000	2,706,158	3,201,667	640,336
California	9.45740	1,460,760	21,819,411	25,814,638	5,162,940
Colorado	.97083	300,000	2,239,833	2,649,956	529,993
Connecticut	1.44752	300,000	3,339,620	3,951,119	790,227
Delaware	.23907	300,000	1,199,732	1,419,408	283,883
District of Columbia	.28770	300,000	1,199,732	1,419,408	283,883
Florida	6.24219	964,150	14,401,520	17,038,500	3,407,712
Georgia	2.03364	314,110	4,691,870	5,550,971	1,110,198
Hawaii	.31652	300,000	1,199,732	1,419,408	283,883
Idaho	.36603	300,000	1,199,732	1,419,408	283,883
Illinois	4.91537	759,214	11,340,386	13,416,859	2,683,381
Indiana	2.27372	351,191	5,245,750	6,206,269	1,241,258
Iowa	1.44473	300,000	3,333,165	3,943,482	788,699
Kansas	1.14401	300,000	2,639,370	3,122,650	624,532
Kentucky	1.56458	300,000	3,609,686	4,270,635	854,130
Louisiana	1.56989	300,000	3,621,929	4,285,120	857,027
Maine	.53215	300,000	1,227,728	1,452,531	290,507
Maryland	1.59861	300,000	3,688,186	4,363,508	872,705
Massachusetts	2.78638	430,376	6,428,525	7,605,616	1,521,129
Michigan	3.62379	559,720	8,360,538	9,891,388	1,978,285
Minnesota	1.80537	300,000	4,165,205	4,927,872	985,578
Mississippi	1.09083	300,000	2,516,693	2,977,510	595,504
Missouri	2.42454	374,488	5,593,726	6,617,961	1,323,597
Montana	.33095	300,000	1,199,732	1,419,408	283,883
Nebraska	.75798	300,000	1,748,745	2,068,948	413,791
Nevada	.28127	300,000	1,199,732	1,419,408	283,883
New Hampshire	.39591	300,000	1,199,732	1,419,408	283,883
New Jersey	3.40590	526,066	7,857,847	9,296,653	1,859,337
New Mexico	.45643	300,000	1,199,732	1,419,408	283,883
New York	8.33110	1,286,796	19,220,882	22,740,308	4,548,078
North Carolina	2.37889	367,436	5,488,389	6,493,337	1,298,672
North Dakota	.30084	300,000	1,199,732	1,419,408	283,883
Ohio	4.60167	710,760	10,616,635	12,560,587	2,512,126
Oklahoma	1.40624	300,000	3,244,375	3,838,434	767,689
Oregon	1.16838	300,000	2,695,599	3,189,175	637,837

TITLE III—ALLOTMENTS BY STATE: FISCAL YEAR 1982—Continued

State	Population 60-plus distribution factor	Part A State administration	Part B supportive services and service centers	Part C–1 congregate meals	Part C–2 home-delivered meals
Pennsylvania	6.00683	927,796	13,858,500	16,396,051	3,279,222
Rhode Island	.48953	300,000	1,199,732	1,419,408	283,883
South Carolina	1.15451	300,000	2,663,594	3,151,310	630,264
South Dakota	.33872	300,000	1,199,732	1,419,408	283,883
Tennessee	1.99093	307,512	4,593,314	5,434,370	1,086,878
Texas	5.28059	815,624	12,182,985	14,413,742	2,882,758
Utah	.43154	300,000	1,199,732	1,419,408	283,883
Vermont	.21979	300,000	1,199,732	1,419,408	283,883
Virginia	2.01597	311,380	4,651,086	5,502,720	1,100,548
Washington	1.69382	300,000	3,907,863	4,623,409	924,685
West Virginia	.91738	300,000	2,116,502	2,504,043	500,810
Wisconsin	2.14054	330,621	4,938,486	5,842,744	1,168,553
Wyoming	.14664	300,000	1,199,732	1,419,408	283,883
Puerto Rico	1.05640	300,000	2,437,245	2,883,515	576,705
Guam	.01001	75,000	599,866	709,704	141,941
Trust Territory	.02065	75,000	599,866	709,704	141,941
Virgin Islands	.01571	75,000	599,866	709,704	141,941
American Samoa	.00357	75,000	149,966	177,426	35,485
Northern Marianas	.00256	75,000	149,966	177,426	35,485
Total	100.00000	21,673,000	239,946,310	283,881,510	56,776,500

Note.—Amounts issued to State agencies on individual grant awards reflect 51 pecent of the annualized amounts listed above. Additional funds have been awarded to American Samoa in order to provide funding at the fiscal year 1978 level. These funds have been withheld from the amount reserved for evaluation.

Source: Administration on Aging, Office of Human Development Service, Aug. 20, 1982

TITLE III—ALLOTMENTS BY STATE: FISCAL YEAR 1981

State	Population 60-plus distribution factor	Part A State administration	Part B supportive services and service centers	Part C–1 congregate meals	Part C–2 home delivered meals
Alabama	1.67014	300,000	4,038,595	4,731,608	881,400
Alaska	0.05510	300,000	1,255,400	1,460,250	274,250
Arizona	1.13454	300,000	2,743,464	3,214,236	598,745
Arkansas	1.15258	300,000	2,765,484	3,237,373	603,578
California	9.48515	1,599,454	22,936,236	26,872,040	5,005,703
Colorado	0.98530	300,000	2,382,562	2,791,405	519,980
Connecticut	1.46969	300,000	3,553,876	4,163,713	775,613
Delaware	0.23129	300,000	1,247,400	1,460,250	272,250
District of Columbia	0.28309	300,000	1,255,400	1,470,250	274,250
Florida	5.93860	1,001,409	14,360,238	16,824,421	3,134,039
Georgia	1.95581	329,803	4,729,379	5,540,930	1,032,159
Hawaii	0.30351	300,000	1,247,400	1,460,250	272,250
Idaho	0.37582	300,000	1,255,400	1,470,250	274,250
Illinois	4.94174	833,311	11,857,158	13,680,403	2,587,872
Indiana	2.28940	386,056	5,536,050	6,430,500	1,198,907
Iowa	1.48349	300,000	3,599,347	4,216,986	785,536
Kansas	1.17721	300,000	2,846,643	3,335,121	621,263
Kentucky	1.56334	300,000	3,780,342	4,429,040	825,037
Louisiana	1.52729	300,000	3,664,567	4,289,871	799,806
Maine	0.53623	300,000	1,296,667	1,519,172	280,811
Maryland	1.59086	300,000	3,846,896	4,507,015	839,563
Massachusetts	2.84161	479,172	6,871,344	8,050,452	1,499,631
Michigan	3.62412	611,125	8,763,555	10,267,361	1,912,595
Minnesota	1.84056	310,368	4,450,684	5,214,411	971,336
Mississippi	1.06340	300,000	2,571,440	3,012,693	561,201
Missouri	2.44504	412,301	5,866,616	6,867,666	1,280,412
Montana	0.34797	300,000	1,247,400	1,460,250	272,250
Nebraska	0.78410	300,000	1,881,365	2,202,391	410,615
Nevada	0.26301	300,000	1,255,400	1,470,250	274,250

TITLE III—ALLOTMENTS BY STATE: FISCAL YEAR 1981—Continued

State	Population 60-plus distribution factor	Part A State administration	Part B supportive services and service centers	Part C-1 congregate meals	Part C-2 home delivered meals
New Hampshire	0.39365	300,000	1,255,400	1,460,250	272,250
New Jersey	8.47257	585,570	8,397,095	9,838,018	1,832,617
New Mexico	0.44603	300,000	1,247,400	1,460,250	272,250
New York	8.52689	1,437,866	20,619,040	24,157,220	4,499,985
North Carolina	2.30842	389,262	5,538,797	6,483,909	1,208,864
North Dakota	0.32067	300,000	1,255,400	1,470,250	274,250
Ohio	4.62821	780,442	11,191,567	13,112,013	2,442,494
Oklahoma	1.40855	300,000	3,406,050	3,990,520	743,350
Oregon	1.18717	300,000	2,870,709	3,363,315	623,691
Pennsylvania	6.06656	1,022,988	14,556,063	17,186,962	3,201,572
Rhode Island	0.49071	300,000	1,256,590	1,472,151	274,250
South Carolina	1.09805	300,000	2,655,225	3,110,855	579,487
South Dakota	0.35448	300,000	1,247,400	1,470,250	272,250
Tennessee	1.95940	330,408	4,738,057	5,551,097	1,034,054
Texas	6.21524	879,431	12,513,393	14,648,615	2,731,098
Utah	0.43637	300,000	1,255,572	1,470,833	274,250
Vermont	0.21772	300,000	1,247,400	1,460,250	272,250
Virginia	2.01076	339,069	4,862,258	5,696,610	1,061,159
Washington	1.66928	300,000	4,036,507	4,729,162	876,161
West Virginia	0.92110	300,000	2,227,336	2,609,541	482,360
Wisconsin	2.20584	371,965	5,333,991	6,249,291	1,164,112
Wyoming	0.16229	300,000	1,247,400	1,460,250	272,250
Puerto Rico	1.08511	300,000	2,623,933	3,074,194	572,658
Guam	0.01040	75,000	627,700	730,125	137,125
Trust Territory	0.02158	75,000	623,700	492,125	136,125
Virgin Islands	0.01172	75,000	623,700	730,125	136,125
American Samoa	0.00858	75,000	482,675	589,719	34,031
Northern Marianas	0.00266	75,000	159,925	182,531	35,031
Total	100.00000	22,675,000	251,206,591	294,100,989	54,755,651

Note.—The fiscal year 1981 continuing resolution for title III is as follows: Social services and centers $251,473,139; congregate meals $295,000,000; home delivered meals $55,000,000; State agency activities $22,675,000. The above amounts for social services and nutrition have been reduced for program evaluation by the following percentages: Social services—0.79 percent; Congregate Meals—1.0 percent; and, Home Delivered Meals—1.0 percent.

These allotment amounts do not reflect adjustments for title VI grants or interstate planning and service areas.

Additional funds have been awarded to American Samoa in order to provide funding at the fiscal year 1978 level. These additional funds have been withheld from the amount reserved for evaluation.

Source: Administration on Aging, Office of Human Development Services, Department of Health and Human Services, June 1981.

NUTRITION PROGRAMS

CONGREGATE NUTRITION SERVICES (FACILITIES)

4th quarter, 1981	Total sites	Senior center	Religious	School	Housing	Restaurant	Other
Total	12,915	4,647	2,367	464	1,629	280	3,528
Region I	790	218	186	33	184	23	146
Connecticut	172	57	34	6	57	1	17
Maine	82	16	26	7	8	2	23
Massachusetts	331	77	68	15	91	0	80
New Hampshire	54	12	15	1	8	18	
Rhode Island	54	25	11	2	10	1	5
Vermont	97	31	32	2	10	1	21
Region II	1,158	535	262	43	84	7	227
New Jersey	210	34	65	10	34		67
New York	843	430	189	32	43	7	142

CONGREGATE NUTRITION SERVICES (FACILITIES)—Continued

4th quarter, 1981	Total sites	Senior center	Religious	School	Housing	Restaurant	Other
Puerto Rico	82	68	5	1	3	.....	5
Virgin Islands	23	3	3	.....	4	.....	13
Region III	1,239	398	310	53	149	19	310
Delaware	35	7	8	3	1	0	16
District of Columbia	60	11	26	1	18	0	4
Maryland	259	58	64	22	52	7	56
Pennsylvania	530	190	139	5	57	6	133
Virginia	218	67	53	14	10	6	68
West Virginia	137	65	20	8	11	.....	33
Region IV	2,107	660	320	84	341	3	699
Alabama	264	91	16	8	55	1	93
Florida	435	78	117	39	53	.....	148
Georgia	176	87	13	7	35	1	33
Kentucky	247	123	34	4	25	.....	61
Mississippi	232	79	10	9	38	.....	96
North Carolina	336	48	77	2	61	.....	148
South Carolina	144	41	24	8	12	1	58
Tennessee	273	113	29	7	62	.....	62
Region V	2,852	828	572	105	453	123	771
Illinois	511	144	127	4	83	13	140
Indiana	402	106	83	3	73	17	120
Michigan	647	221	114	55	89	10	158
Minnesota	287	128	35	3	37	13	71
Ohio	440	98	124	8	92	6	112
Wisconsin	565	131	89	32	79	64	170
Region VI	1,486	681	212	52	140	1	400
Arkansas	216	120	9	3	29	.....	55
Louisiana	293	80	52	27	31	1	102
New Mexico	104	49	11	5	6	.....	33
Oklahoma	151	70	15	1	22	.....	43
Texas	722	362	125	16	52	.....	167
Region VII	840	372	126	18	83	21	220
Iowa	260	81	40	5	9	14	111
Kansas	234	97	39	7	33	4	54
Missouri	221	124	22	6	33	.....	36
Nebraska	125	70	25	.....	8	3	19
Region VIII	680	375	53	30	61	40	121
Colorado	192	85	23	10	28	3	43
Montana	141	91	11	4	2	18	15
North Dakota	116	67	8	4	15	5	17
South Dakota	77	35	5	.....	9	2	26
Utah	99	64	2	12	4	7	10
Wyoming	55	33	4	.....	3	5	10
Region IX	1,182	360	207	22	89	9	495
American Samoa	76	.....	.....	.....	9	.....	67
Arizona	135	99	12	4	4	.....	16
California	793	206	168	14	53	8	344
Guam	16	1	2	.....	.....	.....	13
Hawaii	82	13	20	.....	10	.....	39
Nevada	74	37	4	4	13	1	15
Trust Territory	3	3	.....	.....	.....	.....	.....

CONGREGATE NUTRITION SERVICES (FACILITIES)—Continued

4th quarter, 1981	Total sites	Senior center	Religious	School	Housing	Restaurant	Other
Northern Marianas	3	1	1				1
Region X	581	220	119	24	45	34	139
Alaska	40	15	3	2	5	8	7
Idaho	117	69	9	5	3	12	19
Oregon	197	52	68	7	18	2	50
Washington	227	84	39	10	19	12	63

Source: Administration on Aging, February 1982

CONGREGATE NUTRITION SERVICES (PARTICIPANTS)

4th quarter 1981	Total served	Greatest economic need	Greatest social need	Total minority	America Indian/ Alaskan Native	Asian Pacific Island	Black	Hispanic	Minority greatest economic need
Total	2,832,870	1,701,011	1,292,734	534,990	31,665	40,365	319,122	134,610	418,592
Region I	129,116	93,356	94,638	6,294	330	371	4,504	1,089	4,667
Connecticut	20,383	7,269	20,383	1,759	54	20	1,253	432	1,425
Maine	12,268	8,897	12,137	72	59	1	11	1	72
Massachusetts	50,000	45,000	40,000	3,700	130	320	2,700	550	2,500
New Hampshire	13,733	11,673	2,060	24	3	2	11	8	24
Rhode Island	20,311	12,390	9,896	722	84	27	522	89	638
Vermont	12,421	8,127	10,162	17	0	1	7	9	8
Region II	173,962	82,051	66,163	30,233	742	1,439	13,298	11,857	19,141
New Jersey	43,115	20,394	5,345	5,345	66	76	4,374	829	2,803
New York	121,648	55,932	51,609	[1] 15,696	676	1,363	8,170	2,590	10,605
Puerto Rico	8,392	4,990	8,392	8,392	.....	.....	.....	8,392	4,990
Virgin Islands	817	735	817	800	.....	.....	754	46	716
Region III	243,408	104,081	144,827	49,690	99	556	47,435	1,600	43,597
Delaware	14,573	5,983	7,062	2,440	12	14	2,388	26	1,983
Dist. of Col	6,055	5,558	5,056	5,056	13	90	4,726	227	5,000
Maryland	40,664	27,766	12,898	11,979	18	205	11,607	149	10,273
Pennsylvania	135,492	34,449	96,235	18,259	43	176	17,003	1,037	16,433
Virginia	21,031	15,170	12,642	10,134	12	71	9,890	161	8,306
West Virginia	25,593	15,155	10,934	1,822	1	.....	1,821	.....	1,602
Region IV	413,826	296,740	199,089	113,543	1,042	209	99,312	12,890	98,919
Alabama	29,647	21,832	15,415	10,706	101	.....	10,601	4	8,125
Florida	74,375	51,941	45,119	27,414	285	161	14,057	12,911	23,799
Georgia	37,026	27,787	20,857	17,605	3	19	17,542	41	16,354
Kentucky	151,428	112,760	38,668	19,153	36	14	19,085	18	16,583
Mississippi	28,784	23,209	22,206	11,221	.....	.....	11,221	.....	10,291
North Carolina	40,842	26,307	26,779	13,309	606	7	12,690	6	11,207
South Carolina	12,710	9,662	9,034	6,389	6	2	6,381	.....	5,553

CONGREGATE NUTRITION SERVICES (PARTICIPANTS)—Continued

4th quarter 1981	Total served	Greatest economic need	Greatest social need	Total minority	America Indian/ Alaskan Native	Asian Pacific Island	Black	Hispanic	Minority greatest economic need
Tennessee	39,014	23,242	21,011	7,746	5	6	7,735		7,007
Region V	644,977	371,697	207,908	70,008	2,977	1,035	61,898	4,052	58,295
Illinois	133,138	61,297	92,625	12,306	51	787	10,939	529	7,095
Indiana	61,087	36,081	36,609	5,080	40	8	4,791	241	4,799
Michigan	175,319	113,406	31,441	37,105	741	75	33,711	2,578	34,345
Minnesota	80,550	57,316	1,283	2,011	1,413	110	365	123	1,813
Ohio	79,883	46,097	8,000	11,809	59	30	11,332	388	8,809
Wisconsin	115,000	57,500	37,950	[2] 1,697	673	25	760	193	1,434
Region VI	232,475	183,118	127,412	98,633	4,199	87	49,124	40,487	82,060
Arkansas	32,564	22,901	14,804	8,475	87	3	8,378	7	7,902
Louisiana	32,137	24,562	13,630	[3] 15,589	600	1	9,900	152	8,379
New Mexico	27,667	20,218	21,328	16,596	560	8	535	15,493	14,252
Oklahoma	33,607	21,789	11,818	5,698	2,847	24	2,682	145	3,996
Texas	106,500	93,648	65,832	52,475	105	51	27,629	24,690	47,531
Region VII	259,611	130,488	94,512	10,021	713	114	8,329	865	8,856
Iowa	75,300	21,400	1,100	550	30	50	400	70	410
Kansas	42,083	24,474	13,043	2,038	155	19	1,509	355	1,838
Missouri	102,803	64,110	59,904	6,084	32	27	5,798	227	5,403
Nebraska	39,425	20,504	20,465	1,349	496	18	622	213	1,205
Region VIII	144,593	89,511	65,546	14,885	5,173	194	835	7,334	13,063
Colorado	42,501	26,470	19,628	[4] 8,329	160	112	702	5,956	7,181
Montana	22,122	12,992	9,130	1,797	1,720	20	25	82	1,682
North Dakota	24,501	12,564	3,795	450	448	1	1		450
South Dakota	15,776	11,345	10,942	2,697	2,670	1	6	20	2,530
Utah	10,023	7,396	7,462	963	62	42	65	794	717
Wyoming	22,670	18,744	14,589	649	113	18	36	482	503
Region IX	425,459	242,100	181,103	132,279	12,638	34,850	32,921	51,870	82,482

CONGREGATE NUTRITION SERVICES (PARTICIPANTS)—Continued

4th quarter 1981	Total served	Greatest economic need	Greatest social need	Total minority	America Indian/ Alaskan Native	Asian Pacific Island	Black	Hispanic	Minority greatest economic need
American Samoa	1,961	1,020	941	1,961	.....	1,961	.....	.....	1,020
Arizona	37,176	15,133	6,649	6,565	1,729	130	798	3,908	4,910
California	361,728	212,056	160,303	112,882	10,166	23,199	31,929	47,588	70,549
Guam	1,055	1,000	350	1,040	.....	1,040	.....	.....	1,000
Hawaii	9,454	3,723	6,612	7,838	4	7,144	13	77	2,972
Nevada	13,808	7,891	9,671	1,316	739	99	181	297	1,079
Trust Territory	952	952	952	952	.....	952	.....	.....	952
Northern Marianas	325	325	325	325	.....	325	.....	.....	.....
Region X	165,443	107,869	111,539	9,204	3,752	1,510	1,466	2,476	7,512
Alaska	4,579	2,877	4,579	1,805	1,602	67	62	74	1,805
Idaho	33,796	24,248	22,574	783	104	37	27	615	691
Oregon	66,666	42,811	39,069	2,060	566	240	596	658	1,599
Washington	60,422	37,933	45,317	4,556	1,480	1,166	781	1,129	3,417

[1] Includes 2,897 limited English speaking.
[2] Includes 46 other (unidentified).
[3] Includes 4,936 French.
[4] Total includes 1,399 Orthodox Jews.

Source: Administration on Aging, February 1982.

CONGREGATE NUTRITION SERVICES (MEALS)

4th quarter, 1981	Total meal	Catered	Site prepared	Center kitchens prepared	Elderly/ spouses	III–C–1 only
Total	142,594,082	69,754,054	41,811,100	31,028,928	138,579,878	120,347,453
Region I	7,738,725	4,879,810	1,077,804	1,781,111	7,495,461	7,005,025
Connecticut	1,751,127	1,141,735	24,516	584,876	1,733,037	1,750,728
Maine	558,316	85,366	240,794	232,056	549,544	262,967
Massachusetts	3,706,341	2,629,196	289,152	787,993	3,529,849	3,529,849
New Hampshire	486,266	247,996	238,270	.....	479,440	486,266
Rhode Island	749,998	485,168	88,644	176,186	739,882	388,438
Vermont	486,777	290,349	196,428	.....	463,709	486,777
Region II	19,384,465	5,580,308	11,344,605	2,459,552	19,038,481	14,000,723
New Jersey	3,856,652	2,858,875	997,777	.....	3,813,514	3,858,652
New York	14,314,594	2,719,773	9,318,801	2,276,920	14,074,729	9,026,064
Puerto Rico	1,029,687	1,660	1,028,027	.....	973,551	971,399
Virgin Islands	183,532	.....	.....	183,532	176,687	144,608
Region III	12,549,696	8,606,539	2,090,665	1,852,492	12,312,719	11,969,380
Delaware	592,885	22,988	381,076	188,821	566,592	567,368
Dist. of Col.	643,162	597,939	45,223	.....	640,540	361,985
Maryland	2,705,287	2,630,660	74,627	.....	2,658,827	2,619,074
Pennsylvania	6,072,391	4,311,398	728,687	1,032,306	6,008,785	6,011,667
Virginia	1,536,329	921,200	226,378	388,751	1,462,992	1,511,677
West Virginia	999,642	122,354	634,674	242,614	974,983	897,609
Region IV	22,646,535	16,985,781	1,640,735	4,020,019	21,915,203	20,395,271
Alabama	2,644,606	2,641,721	2,885	.....	2,627,427	2,644,606
Florida	6,530,179	5,370,944	133,757	1,025,478	6,497,699	6,069,580
Georgia	1,769,671	1,320,538	98,117	351,016	1,751,939	1,619,060
Kentucky	2,138,169	705,595	513,160	919,412	1,578,436	1,679,393
Mississippi	2,139,127	2,081,045	58,082	.....	2,134,282	2,135,162
North Carolina	3,686,814	2,166,528	450,206	1,070,080	3,642,486	2,867,738
South Carolina	1,394,579	1,283,349	87,768	23,462	1,387,555	1,071,604
Tennessee	2,343,392	1,416,061	296,760	630,571	2,296,379	2,308,128
Region V	26,957,813	17,624,057	4,862,108	4,471,648	26,372,732	22,758,492
Illinois	5,258,865	3,398,841	1,003,460	856,564	5,109,634	4,320,983
Indiana	2,813,503	2,449,610	215,857	148,036	2,746,981	2,491,576
Michigan	6,145,982	3,323,581	1,386,926	1,435,475	6,055,401	5,494,841
Minnesota	2,895,385	1,566,873	1,076,104	252,408	2,794,338	1,379,472
Ohio	4,920,822	2,853,005	633,280	1,434,537	4,851,434	4,770,912
Wisconsin	4,923,256	4,032,147	546,481	344,628	4,814,944	4,300,708
Region VI	17,614,611	4,314,184	7,101,409	6,199,018	16,898,862	14,608,735
Arkansas	2,437,767	759,172	988,955	689,640	2,322,253	1,306,484
Louisiana	2,437,971	1,558,442	113,304	766,225	2,396,628	2,386,950
New Mexico	1,307,584	188,944	1,004,654	113,986	1,124,229	933,293
Oklahoma	2,568,799	408,246	1,374,869	785,684	2,504,218	1,649,072
Texas	8,862,490	1,399,380	3,619,627	3,843,483	8,551,534	8,332,936
Region VII	9,436,056	3,329,514	4,804,492	1,302,050	9,162,333	7,055,335
Iowa	2,630,318	631,276	1,604,493	394,549	2,562,563	1,354,087
Kansas	2,019,009	1,192,890	346,446	479,673	1,983,148	1,125,218
Missouri	3,454,163	875,680	2,308,922	269,561	3,329,914	3,379,329
Nebraska	1,332,566	629,668	544,631	158,267	1,286,708	1,196,701
Region VIII	5,333,537	1,239,396	2,425,652	1,668,489	5,190,242	4,645,731
Colorado	1,432,259	141,198	325,879	465,182	1,412,710	1,425,130

CONGREGATE NUTRITION SERVICES (MEALS)—Continued

4th quarter, 1981	Total meal	Catered	Site prepared	Center kitchens prepared	Elderly/ spouses	III–C–1 only
Montana	1,027,723	85,589	942,134	.....	1,014,690	807,034
North Dakota	880,248	413,717	303,245	163,286	866,086	880,248
South Dakota	696,778	152,891	336,328	207,559	668,731	459,873
Utah	664,360	410,155	171,650	82,555	627,407	441,277
Wyoming	632,169	35,846	346,416	249,907	600,618	632,169
Region IX	16,653,596	6,124,699	4,457,187	6,071,710	16,102,768	14,387,370
American Samoa	249,078	212,865	36,213	.....	249,078	249,078
Arizona	1,972,467	572,531	1,118,665	281,271	1,685,078	1,533,548
California	12,136,343	4,076,905	2,539,867	5,519,571	11,900,883	10,730,721
Guam	336,751	.....	336,751	.....	336,751	336,751
Hawaii	1,160,806	1,130,071	30,735	.....	1,156,258	772,787
Nevada	721,812	114,046	378,179	229,587	700,734	688,746
Trust Territory	41,960	18,281	16,777	6,902	39,607	41,960
Northern Marianas	34,379	.....	.....	34,377	34,379	34,379
Region X	4,279,048	1,069,766	2,006,443	1,202,839	4,091,077	3,551,391
Alaska	186,641	58,477	102,850	25,314	179,340	186,641
Idaho	719,023	79,173	621,470	18,380	688,770	561,918
Oregon	1,536,930	50,618	639,363	846,949	1,473,963	1,226,317
Washington	1,836,454	881,498	642,760	312,196	1,749,004	1,576,615

Source: Administration on Aging, February 1982

HOME DELIVERED NUTRITION SERVICES (PARTICIPANTS)

4th quarter 1981	Total persons	Greatest economic need	Greatest social need	Total minority	American Indian/ Alaskan Native	Asian/Pacific Island	Black/not Hispanic	Hispanic	Minority greatest economic need
Total	568,082	372,318	361,062	109,163	8,212	7,780	59,660	31,666	81,953
Region I	42,886	35,826	42,584	1,752	89	87	1,229	346	1,513
Connecticut	4,638	1,705	4,638	412	13	5	293	101	342
Maine	3,582	3,292	3,537	10	4	.....	4	2	10
Massachusetts	16,000	14,000	16,000	1,260	70	80	900	210	1,100
New Hampshire	13,821	13,821	13,821	25	.....	2	13	10	25
Rhode Island	2,188	1,680	2,188	44	2	.....	19	23	36
Vermont	2,657	1,328	2,400	0	.....	.....	.....	.....	0
Region II	41,377	20,272	28,033	9,349	156	103	4,404	3,857	6,518
New Jersey	12,889	5,441	12,889	1,452	4	7	1,252	189	1,036
New York	25,416	12,570	12,072	4,830	152	96	2,904	849	3,225
Puerto Rico	2,806	2,022	2,806	2,806	.....	.....	.....	2,806	2,022
Virgin Islands	266	239	266	261	.....	.....	248	13	235
Region III	42,738	26,207	34,308	8,548	28	117	8,308	95	7,219
Delaware	1,526	899	1,295	438	3	2	425	8	340
Dist. of Col.	750	715	680	680	0	7	662	11	662
Maryland	3,497	2,378	1,119	841	2	10	824	5	706
Pennsylvania	26,297	14,661	25,194	4,014	19	15	3,914	66	3,211
Virginia	4,763	3,351	2,777	2,020	3	83	1,929	5	1,806
West Virginia	5,905	4,203	3,243	555	1	.....	554	.....	494
Region IV	81,101	63,932	44,784	21,567	229	26	17,668	3,644	19,200
Alabama	4,672	3,396	4,075	2,341	10	.....	2,331	.....	1,867
Florida	24,886	18,587	16,467	7,988	145	23	6,140	1,680	7,380
Georgia	4,544	3,988	3,377	1,964	.....	.....	1	1,963	1,906
Kentucky	28,174	22,176	5,998	3,404	16	1	3,387	.....	2,928
Mississippi	3,985	3,527	3,418	1,774	.....	.....	1,774	.....	1,696
North Carolina	3,937	3,329	3,574	1,259	54	2	1,202	1	1,186
South Carolina	2,809	2,500	1,630	1,130	1	.....	1,129	.....	1,074

HOME DELIVERED NUTRITION SERVICES (PARTICIPANTS)—Continued

4th quarter 1981	Total persons	Greatest economic need	Greatest social need	Total minority	American Indian/ Alaskan Native	Asian/Pacific Island	Black/not Hispanic	Hispanic	Minority greatest economic need
Tennessee	8,094	6,429	6,245	1,707	3	.....	1,704	.....	1,163
Region V	82,925	49,921	65,201	9,159	640	33	8,033	449	7,515
Illinois	14,719	6,885	10,591	1,355	8	7	1,289	51	772
Indiana	22,039	14,775	16,741	2,850	18	2	2,651	179	2,526
Michigan	15,534	10,438	13,327	1,913	146	15	1,604	148	1,732
Minnesota	4,574	3,007	707	314	279	.....	25	10	247
Ohio	15,724	8,408	13,500	2,397	20	7	2,324	46	1,928
Wisconsin	10,335	6,408	10,335	330	[2]169	2	140	15	310
Region VI	61,146	42,029	34,102	21,003	759	11	10,416	8,857	19,145
Arkansas	6,250	4,905	3,266	1,665	28	.....	1,637	.....	1,454
Louisiana	7,959	6,338	5,167	[3] 4,294	57	.....	2,953	324	3,690
New Mexico	4,362	3,286	3,289	2,864	76	2	47	2,739	2,606
Oklahoma	3,781	3,154	627	1,054	584	.....	444	26	989
Texas	38,794	24,346	21,753	11,126	14	9	5,335	5,768	10,406
Region VII	45,313	27,078	20,953	3,211	174	32	2,751	254	2,912
Iowa	15,900	4,500	275	140	10	15	95	20	75
Kansas	5,481	4,325	3,282	512	22	4	387	99	482
Missouri	17,788	13,385	13,085	2,231	10	12	2,143	66	2,031
Nebraska	6,144	3,932	4,311	328	132	1	126	69	324
Region VIII	38,527	24,883	23,882	3,468	1,963	32	244	1,177	3,214
Colorado	8,626	6,695	7,216	[4] 1,155	9	4	179	911	959
Montana	8,809	6,636	2,173	717	662	6	16	33	715
North Dakota	8,565	4,015	6,320	410	408	1	1	.....	410
South Dakota	3,015	2,465	2,618	715	705	.....	3	7	715
Utah	7,226	3,658	3,818	224	17	21	37	149	171
Wyoming	2,286	1,414	1,737	247	162	.....	8	77	244

HOME DELIVERED NUTRITION SERVICES (PARTICIPANTS)—Continued

4th quarter 1981	Total persons	Greatest economic need	Greatest social need	Total minority	American Indian/ Alaskan Native	Asian/Pacific Island	Black/not Hispanic	Hispanic	Minority greatest economic need
Region IX	103,272	63,667	47,544	28,675	2,960	7,165	5,955	12,595	12,831
American Samoa	1,036	539	497	1,036	.....	1,036	.....	.....	539
Arizona	12,393	5,711	3,044	3,008	706	65	406	1,831	2,045
California	85,726	54,471	41,026	22,496	2,135	4,165	5,493	10,703	8,609
Guam	440	340	252	425	.....	425	.....	.....	340
Hawaii	1,151	650	1,093	865	2	838	.....	25	503
Nevada	1,890	1,320	996	209	117	.....	56	36	159
Trust Territory	429	429	429	429	.....	429	.....	.....	429
Northern Marianas	207	207	207	207	.....	207	.....	.....	207
Region X	28,797	18,503	19,671	2,432	1,214	174	652	392	1,886
Alaska	1,693	1,064	1,693	787	710	25	22	30	787
Idaho	4,506	3,594	2,977	135	43	3	19	70	112
Oregon	13,267	7,567	8,002	840	102	66	451	221	485
Washington	9,331	6,378	6,999	670	359	80	160	71	502

[1] Includes 829 limited English speaking.
[2] Includes 4 other language groups.
[3] Includes 960 French.
[4] Total includes 52 Orthodox Jews.

Source: Administration on Aging.

HOME DELIVERED NUTRITION SERVICES (NUMBER MEALS SERVED)

4th quarter 1981	Total meals	Hot	Cold	III-C-2 only
Total	45,283,802	39,295,897	4,690,585	34,971,652
Region I	3,923,459	3,652,777	270,662	3,365,320
Connecticut	761,242	526,018	235,224	746,581
Maine	455,404	454,519	885	305,551
Massachusetts	1,727,643	1,693,090	34,553	1,727,643
New Hampshire	507,631	507,631	.....	261,082
Rhode Island	245,093	245,093	.....	98,037
Vermont	226,426	226,426	.....	226,426
Region II	5,292,237	3,455,374	539,543	4,875,412
New Jersey	1,297,320	.....	.....	1,159,733
New York	3,561,057	3,021,514	539,543	3,297,681
Puerto Rico	368,343	368,343	.....	368,221
Virgin Islands	65,517	65,517	.....	49,777
Region III	5,482,254	4,651,359	830,895	4,080,985
Delaware	212,587	176,353	36,234	189,410
Dist. of Col	136,564	136,564	.....	69,031
Maryland	992,063	597,815	394,248	474,320
Pennsylvania	2,947,773	2,594,040	353,733	2,210,830
Virginia	650,031	604,489	45,542	636,537
West Virginia	543,236	542,098	1,138	500,857
Region IV	7,478,679	6,800,075	678,604	5,847,293
Alabama	524,183	524,183	.....	495,243
Florida	2,857,842	2,283,818	574,024	2,254,869
Georgia	658,133	649,142	8,991	501,540
Kentucky	1,145,364	1,093,530	51,834	859,023
Mississippi	533,138	537,341	15,797	518,851
North Carolina	441,707	438,505	3,202	345,663
South Carolina	355,893	355,218	675	222,550
Tennessee	942,419	918,338	24,081	649,554
Region V	8,265,799	7,013,646	1,252,153	5,769,771
Illinois	1,434,636	1,156,410	278,226	1,206,594
Indiana	1,666,511	1,471,764	194,747	1,210,401
Michigan	2,459,881	1,701,234	758,647	1,169,857
Minnesota	290,898	283,978	6,920	151,222
Ohio	1,529,881	1,529,881	.....	1,291,152
Wisconsin	883,992	870,379	13,613	740,545
Region VI	4,182,230	4,088,299	93,931	2,583,674
Arkansas	795,178	760,927	34,251	392,939
Louisiana	892,327	865,979	26,348	540,320
New Mexico	322,416	322,416	.....	245,767
Oklahoma	373,709	366,560	7,149	30,149
Texas	1,798,600	1,772,417	26,183	1,374,499
Region VII	2,894,788	2,848,707	46,081	1,820,517
Iowa	645,884	645,770	114	288,968
Kansas	582,820	554,914	27,906	223,889
Missouri	1,298,361	1,284,612	13,749	1,089,392
Nebraska	367,723	363,411	4,312	218,268
Region VIII	1,784,642	1,776,379	8,263	1,485,573
Colorado	418,354	418,332	22	418,354
Montana	411,626	411,626	.....	367,113

HOME DELIVERED NUTRITION SERVICES (NUMBER MEALS SERVED)—Continued

4th quarter 1981	Total meals	Hot	Cold	III-C-2 only
North Dakota	155,225	152,151	3,074	155,225
South Dakota	154,577	154,577	.....	92,746
Utah	505,958	500,848	5,110	313,231
Wyoming	138,902	138,845	57	138,904
Region IX	4,078,285	3,636,184	442,101	3,594,117
American Samoa	121,558	.....	121,558	121,558
Arizona	774,995	658,746	116,249	672,346
California	2,613,314	2,453,655	159,659	2,279,722
Guam	141,224	141,224	.....	141,224
Hawaii	150,632	150,632	.....	123,283
Nevada	219,733	218,425	1,308	199,155
Trust Territory	20,912	13,502	7,410	20,912
Northern Marianas	35,917	.....	35,917	35,917
Region X	1,901,449	1,373,097	528,352	1,548,990
Alaska	68,862	65,941	2,921	68,862
Idaho	234,559	223,206	11,353	163,950
Oregon	788,446	781,734	6,712	626,784
Washington	809,582	302,216	507,366	689,394

Source: Administration on Aging, February 1982

TITLE IV—TRAINING, RESEARCH, AND DISCRETIONARY PROJECTS AND PROGRAMS

Authority for the conduct of training and research activities related to the field of aging has existed since the passage of the Act in 1965. The 1969 amendments added authority for the conduct of "areawide model projects" under title III of the Act; authority and requirements for similar and expanded "model" or demonstration projects were subsequently incorporated under the title IV discretionary program in 1978. The 1981 amendments consolidated the Commissioner's authority to support a number of training, research, and demonstration activities, simplified certain funding requirements, and granted greater flexibility to the Commissioner in the award of discretionary funds.

Training.—Authority for training programs under the Act has generally emphasized the creation of programs to assist persons employed or preparing for employment in the field of aging. In order to provide specialized training or career preparation, AoA has principally relied upon institutions of higher education. AoA has awarded grants to colleges and universities as well as other public and private non-profit institutions and agencies to provide training to encourage students to enter, train for, and become engaged in professional, technical, and other specialized services in the aging field. Support has also been provided to upgrade the skills of persons already employed in aging-related jobs.

Various amendments to the Act have authorized studies of the need for trained personnel in the field of aging and the 1978 amendments required a national aging manpower policy which was to be developed and implemented through the various training activities supported at that time by Federal departments and agencies. With the simplification of title IV requirements in the context of the 1981 amendments, this specific requirement was eliminated from the law.

In 1973 authority for the development of multidisciplinary centers of gerontology was added. This program, which did not receive its first appropriation until 1976, is intended to develop or maintain an interest in and commitment to gerontological activities on the part of institutions of higher education. The authority for this program was retained in the 1981 amendments to the Act.

Research.—Since 1965, when research activities were first authorized, AoA has supported a wide range of projects related to the goals and purposes of the Act, including studies in the areas of health care, housing, social services, retirement roles, and the needs of low income and minority elderly. In general, the Act's research authority has been broad; however, various amendments to the Act have authorized or required the Commissioner to conduct specific studies, including a study of issues related to provision of

transportation services and a study related to the differences in the provision of services between urban and rural areas.

Demonstrations.—Under AoA's demonstration project authority funds are made available to support activities which will demonstrate innovative methods to deliver services to older persons. The authority to conduct "model" or demonstration projects, added to the Act in 1969, permitted the award of funds for this purpose only to State agencies on aging. The 1973 amendments expanded the program and authorized the Commissioner to award funds to other public or nonprofit agencies or organizations in order to expand or improve social services or otherwise promote the well-being of older persons. In 1975 the Act was amended to require the Commissioner to give special consideration to the support of projects to develop ombudsman programs for nursing home residents (which eventually was incorporated as a State plan requirement under title III) and adult day care programs.

The 1978 amendments to the act significantly expanded the Commissioner's authority to support a number of demonstration activities, including special projects in comprehensive long term care, projects designed to reduce the burden of high utility and home heating costs, and other projects of national significance. These amendments also required a specific funding set aside of $5 million for legal services projects. They also required the Commissioner to give special consideration to funding rural area agencies on aging for projects devoted to meeting the special needs of the rural elderly and projects to coordinate social services for the homebound elderly, blind, and disabled. The 1981 amendments specified a number of demonstration projects to receive special emphasis such as projects related to housing, health care, and education and training activities in addition to some other areas previously authorized. Those most recent amendments eliminated the requirement for a set aside of funds for legal services projects, but required the Commissioner to conduct projects to assist State and area agencies providing legal services to older persons.

Major Provisions

TRAINING AND MULTIDISCIPLINARY CENTERS

Title IV authorizes the Commissioner on Aging to award grants or enter into contracts for activities relating to training, including recruitment to the field of aging, training volunteers and other persons employed or preparing for employment in the field of aging, and technical assistance activities. It also authorizes grants for multidisciplinary centers of gerontology and gerontology centers of special emphasis.

RESEARCH AND DEVELOPMENT PROJECTS

This title authorizes the Commissioner to support research and development projects related to the purposes of the Act as well as evaluation of the results of research and development projects. It also authorizes the collection and dissemination of information related to research findings and demonstration results and the con-

duct of conferences for the exchange of information and other activities related to title IV.

DEMONSTRATION PROJECTS

Under other title IV provisions, the Commissioner is authorized to conduct model projects which will demonstrate methods of improving or expanding supportive or nutrition services or other services to promote the well-being of older persons. In the conduct of these projects, the Commissioner is required to give special consideration to projects devoted to the special needs of the rural elderly, including alternative health care delivery systems, advocacy and outreach programs, and transportation services. The title specifies certain other model projects to receive special emphasis including those designed to: meet special health care and housing needs of older persons; provide education and training and preretirement education information; coordinate supportive services for the homebound elderly, blind, and disabled; and meet the special needs of older individuals not receiving adequate services under other portions of the Act with emphasis on low income, minority, Indian, limited English speaking and rural older persons.

The Commissioner is required to conduct demonstration projects relating to legal services for older persons, and specifically to provide assistance to State and area agencies on aging supporting legal services and projects, and to expand or improve the delivery of legal services to older individuals who have social or economic needs.

In addition to other areas, the Commissioner is authorized to conduct special demonstrations in comprehensive long term care projects which would relieve the excessive burdens of high utility services and home heating costs, and other projects having national significance.

PROHIBITION ON USE OF FUNDS

Title IV prohibits funds appropriated under the title from being transferred to any office or other authority of the Federal Government not directly responsible to the Commissioner or from being used for any program or activity not specifically authorized by the title.

TITLE V—COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS

Title V of the Older Americans Act, Community Service Employment for Older Americans, was originally modeled after a pilot project, Operation Mainstream, authorized under title II of the Economic Opportunity Act, and first funded in 1965. Operation Mainstream was designed to employ poor, chronically unemployed adults and operated primarily in rural areas. The first Operation Mainstream project for workers aged 55 and over was initiated through a grant to Green Thumb Inc., a non-profit affiliate of the National Farmers Union. In 1967, administrative responsibility for Operation Mainstream was transferred from the Office of Economic Opportunity to the Department of Labor (DOL) but funding authority continued under the Economic Opportunity Act.

In 1973 the program was given statutory basis as title IX of the "Older Americans Comprehensive Services Amendments of 1973." The law has been substantively amended three times since 1973—in 1975, 1978, and 1981. The 1975 amendments incorporated the program as title IX of the Older Americans Act of 1965, and the 1978 amendments redesignated the program as title V of the Act. The program continues to be administered by DOL which awards funds to national sponsors and to State agencies.

Major amendments to the Act have centered on changes in criteria for participant eligibility, and allocation and distribution of funds to national organizations and to States. The 1978 amendments set participant income eligibility criteria, not previously required by law, at 125 percent of the poverty index. The 1981 amendments altered the definition of who may be eligible for employment opportunities by eliminating the prior law requirements that persons have "poor employment prospects" and have difficulty in obtaining employment. These amendments also eliminated as condition for receipt of a project award that the project provide employment services to individuals "whose opportunities for other suitable public or private employment are poor."

The provisions relating to the allocation and distribution of funds to national organizations and States were amended in 1975, 1978, and 1981. The 1975 amendments included some relatively major changes in prior law requirements for distribution of funds under title IX. First, they included a new provision requiring a "hold harmless" amount for national organizations; that is, in allotting funds DOL was required to reserve for national organizations an amount sufficient to maintain their FY 1975 level of activities under the title IX community service employment program and under Operation Mainstream (authorized under title III of the Comprehensive Employment and Training Act). Secondly, the law required that the remainder of appropriated funds was to be distributed based on a formula taking into account the number of per-

sons aged 55 and over and the per capita income in each State. DOL was further required to assure equitable distribution of activity among the States under the national contractor authority, to the extent feasible. The 1978 amendments updated the year for which "hold harmless" amount for national organizations was to be applied from 1975 to 1978 and added a stipulation that no more than 45 percent of funds in excess of the 1978 level of appropriations could be allocated to national organizations. These amendments also required that at least 55 percent of funds appropriated in excess of the 1978 appropriations level be allocated among States according to the geographic distribution of persons 55 and over. The 1981 amendments required that, to the extent feasible, the portion of funds above the 1978 level of appropriations reserved for national organizations (i.e., 45 percent of the excess) be distributed among States according to the geographic distribution of persons 55 and over. These most recent amendments also required that the remainder of funds in excess of the 1978 level of appropriations be awarded to State agencies on aging.

Another significant amendment added in 1978 required the program to be more closely coordinated with State agencies on aging. Other amendments, in 1978, authorized and subsequently, in 1981, required, DOL to conduct certain activities related to placement of participants in private sector employment.

The program has seen steady increases in funding and participant enrollment since its inception. In 1969, participant enrollment was 2,400 with a budget of $5.5 million.[1] In the 1981-82 program year there were 54,216 positions funded at $277.1 million,[2] with eight national organizations receiving $209.8 million for 41,058 jobs, and State and territorial governments receiving $67.3 million for 13,158 jobs. The eight national organizations and their 1981-82 funding amounts are:

—Green Thumb, Inc. (Washington, D.C.), an arm of the National Farmer's Union, $80.1 million.
—National Council on the Aging (Washington, D.C.), $23.5 million.
—National Council of Senior Citizens (Washington, D.C.), $45.5 million.
—National Retired Teachers Association/American Association of Retired Persons (Washington, D.C.), $34.1 million.
—U.S. Department of Agriculture's Forest Service (Washington, D.C.), $16.2 million.
—National Center on Black Aged (Washington, D.C.), $2.8 million.
—Asociacion Nacional Pro Personas Mayores (Los Angeles, CA), $2.8 million.
—National Urban League (New York City, NY), $4.7 million.

Participants work in a wide variety of community service activities. In recent years, the proportion working in services to the general community has been almost equal to the proportion working

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[1] Morgan Management Systems, Inc. An evaluation of the performance of the senior community service employment program, title V of the Older Americans Act, p. I-2, Mar. 31, 1981. Prepared for the Federal Council on Aging.

[2] This is the fiscal year funding level; the program is forward-funded, that is, funds are awarded on a July 1 to June 30 basis, strattling 2 fiscal years.

in services to the elderly community. Participants may work up to 1,300 hours per year and average 20–25 hours per week. For the 1980–81 program year the average hourly wage paid to enrollees was $3.42. In addition to wages, enrollees receive annual physical examinations, personal and job-related counseling, and some job training.

During the 1980–81 program year, 67 percent of those enrolled were female, 58 percent had less than a high school education, and 33 percent were minority group members. A majority, 53 percent, were 65 years of age or over; one-quarter were 70 years or over. Eighty-six percent had a family income below poverty level and 9 percent were veterans.

Major Provisions

PURPOSE; ELIGIBILITY; FEDERAL SHARE

The purpose of title V is to promote useful part-time opportunities in comunity service activities for low income unemployed persons aged 55 and older. The Secretary of Labor may award funds to State governments, public and private nonprofit agencies or organizations, including national organizations, or Indian tribal organizations to create employment positions that contribute to the general welfare of the community. Community service activities in which participants may engage include employment in social, health, welfare, educational, legal, and counseling services; library and recreational services; conservation, maintenance or restoration or natural resources; and anti-pollution and environmental quality and weatherization activities.

An eligible individual is defined as one who has an income below 125 percent of the poverty level. Although persons 55 years of age and older are eligible, priority is to be given to persons 60 and over.

The Federal share of project costs may be up to 90 percent (or up to 100 percent in emergency or disaster projects or projects located in economically depressed areas).

CRITERIA FOR PROJECT APPROVAL

Criteria which each project must meet in order to receive funds include assurances that it will:

—Provide employment for eligible individuals in communities where they reside, or in nearby communities;

—Result in increased employment opportunities, and not the displacement of employed workers, impairment of existing contracts, or substitution of title V funds for other funds;

—Assure that wages paid to participants will not be lower than the highest of Federal minimum wage, the State or local minimum wage for comparable employment, or the prevailing rate of pay for persons employed in similar occupations;

—Include such training activities as may be necessary to make effective use of participants skills and talents and provide for payment of training, including a reasonable subsistence allowance;

—Authorize payment for transportation costs incurred by participants' while performing jobs funded under the project;

—Serve the needs of minority, Indian, and limited English-speaking eligible individuals in proportion to their numbers in the State;
—Not employ eligible individuals to perform similar work as that performed by persons who have been laid off; and
—Assure safe and healthy working conditions.

COORDINATION WITH STATE AND AREA AGENCIES ON AGING AND FEDERAL AGENCIES

The law requires national organizations which are recipients of funds to submit to the appropriate State agency on aging, for its review and comment, a description of any project it proposes to undertake in the State 30 days prior to beginning the project. It also requires DOL to consult with State and area agencies on aging to determine locations where community service employment projects are most needed; the types of employment situations and types of skills which are available among eligible individuals in these localities; and the potential projects and numbers of eligible individuals in the local population. It also requires DOL to obtain the written views of the Commissioner of AoA prior to establishing rules or general policy in the administration of the program.

The law stipulates that the Secretary of Labor shall coordinate the title V program with other Federal agencies which carry out related programs.

EXPERIMENTAL PROJECTS

The Secretary is required to develop alternatives for innovative work modes and to provide technical assistance to various agencies and organizations representing business and industry to create job opportunities through work sharing and other experimental projects.

In addition to the above requirements, title V requires DOL to conduct experimental projects designed to assure second career training and the placement of participants in private business concerns. The Secretary is required to reserve at least 1, but not more than 3, percent of funds in excess of the FY 1978 level of appropriations for these projects. The Secretary is required to assure to the extent feasible an equitable geographic distribution of these experimental projects. An evaluation of the program must be conducted and the results submitted to Congress. The definition of eligible individual for the purpose of these experimental projects is an individual who is 55 years or older and who has an income equal to or less than the Bureau of Labor Statistics intermediate level retired couples budget.

EQUITABLE DISTRIBUTION OF FUNDING; "FORWARD FUNDING"

The law contains a provision requiring that a portion of funds be reserved for national organizations operating the program; that is, in allotting funds, DOL is required to reserve a "hold harmless" amount to enable the national organizations to maintain their 1978 level of activities. No more than 45 percent of funds exceeding the 1978 level of appropriations is to be allocated to national organiza-

tions among States according to a formula which takes into account the number of persons 55 years of age and over. The remainder of funds in excess of the 1978 level of appropriations is to be distributed to State agencies on aging according to the same formula.

Funds appropriated for any fiscal year are required to be used on a July 1—June 30 basis rather than on the Federal fiscal year basis of October 1—September 30. This provision places in law the practice of "forward funding" used by DOL for a number of years.

The following charts presents title V funding by State and areas of enrollee employment.

PROGRAM DATA

TOTAL STATE ALLOCATIONS AND AUTHORIZED PARTICIPANT LEVELS, TITLE V COMMUNITY SERVICE EMPLOYMENT PROGRAM—1981-82 PROGRAM YEAR

State	Allocation	Participants
Alabama	$5,018,000	982
Alaska	1,160,000	227
Arizona	2,777,000	543
Arkansas	5,178,000	1,013
California	21,788,000	4,263
Colorado	2,575,000	504
Connecticut	3,316,000	648
Delaware	1,160,000	227
District of Columbia	1,589,000	311
Florida	14,422,000	2,822
Georgia	5,788,000	1,133
Guam	555,750	109
Hawaii	1,160,000	227
Idaho	1,274,000	250
Illinois	11,002,000	2,153
Indiana	7,244,000	1,417
Iowa	3,586,000	702
Kansas	2,833,000	554
Kentucky	5,247,000	1,026
Louisiana	4,494,000	879
Maine	1,763,000	345
Maryland	3,773,000	738
Massachusetts	6,893,000	1,347
Michigan	8,867,000	1,735
Minnesota	6,885,000	1,347
Mississippi	3,394,000	664
Missouri	6,993,000	1,368
Montana	1,738,000	340
Nebraska	2,181,000	427
Nevada	1,274,000	250
New Hampshire	1,213,000	237
New Jersey	8,624,000	1,687
New Mexico	1,296,000	254
New York	20,587,000	4,028
North Carolina	6,755,000	1,322
North Dakota	1,665,000	326
Ohio	12,035,000	2,355
Oklahoma	4,252,000	832
Oregon	3,924,000	767
Pennsylvania	15,578,000	3,048
Puerto Rico	2,952,000	578
Rhode Island	1,455,000	285
South Carolina	3,360,000	657
South Dakota	1,950,000	382

TOTAL STATE ALLOCATIONS AND AUTHORIZED PARTICIPANT LEVELS, TITLE V COMMUNITY SERVICE EMPLOYMENT PROGRAM—1981–82 PROGRAM YEAR—Continued

State	Allocation	Participants
Tennessee	5,508,000	1,078
Texas	13,854,000	2,710
Utah	1,702,000	333
Vermont	1,505,000	295
Virginia	5,852,000	1,145
Virgin Islands	555,750	109
Washington	3,722,000	728
West Virginia	3,139,000	614
Wisconsin	7,303,000	1,428
Wyoming	1,274,000	249
American Samoa	555,750	109
Trust Territory	366,750	72
Northern Marianas	189,000	37
Total	277,100,000	54,216

Source: Department of Labor, Office of Information, July 13, 1981

STATE ALLOCATION BY NATIONAL ORGANIZATION AND GOVERNOR'S SHARE—TITLE V SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM 1981–82 PROGRAM YEAR

State	Green Thumb	National Council on the Aging	National Council of Senior Citizens	National Retired Teachers Association/ American Association of Retired Persons	USDA forest service	National Center on Black Aged	Asociacion Nacional Pro Personas Mayores	National Urban League	Governor's share
Alabama	$582,628	$353,796	$2,107,196	0	$268,595	$482,785	0	0	$1,223,000
Alaska	0	0	0	0	0	0	0	0	1,160,000
Arizona	124,614	1,529,160	0	0	434,266	0	0	0	689,000
Arkansas	3,097,232	0	0	$875,287	386,481	0	0	0	819,000
California	2,280,441	3,818,851	4,495,196	3,357,458	2,049,137	0	$789,917	0	4,997,000
Colorado	538,267	0	698,182	346,299	405,892	0	0	0	586,000
Connecticut	209,451	0	1,986,457	0	0	0	0	$361,092	759,000
Delaware	0	0	0	0	0	0	0	0	1,160,000
District of Columbia	730,932	0	511,683	30,385	0	0	0	0	316,000
Florida	3,140,000	366,000	1,505,500	4,725,038	470,300	403,962	414,200	0	3,397,000
Georgia	1,145,697	512,570	0	2,040,663	411,250	0	0	304,820	1,373,000
Guam	0	0	0	0	0	0	0	0	555,750
Hawaii	0	0	0	0	0	0	0	0	1,160,000
Idaho	195,043	0	0	236,957	527,000	0	0	0	315,000
Illinois	3,996,088	0	2,397,176	1,137,516	220,152	0	291,335	307,733	2,652,000
Indiana	3,385,454	0	1,666,205	376,540	82,717	0	0	310,084	1,423,000
Iowa	1,249,161	0	577,653	885,186	0	0	0	0	874,000
Kansas	1,774,290	0	0	0	0	0	386,710	0	672,000
Kentucky	1,804,175	837,930	0	714,426	342,030	448,439	0	0	1,100,000
Louisiana	1,080,778	477,728	589,861	606,495	347,600	0	310,538	0	1,081,000
Maine	175,276	978,896	0	180,407	44,421	0	0	0	384,000
Maryland	353,379	0	2,476,621	0	0	0	0	0	943,000
Massachusetts	915,255	0	3,580,642	404,447	0	0	0	330,656	1,662,000
Michigan	3,120,730	0	2,250,781	969,458	466,031	0	0	0	2,060,000
Minnesota	3,649,562	0	1,028,138	0	600,778	0	0	530,522	1,076,000
Mississippi	479,207	0	951,785	0	670,581	482,427	0	0	810,000
Missouri	3,311,268	275,964	396,500	948,553	527,715	0	0	0	1,533,000
Montana	942,084	0	0	279,416	200,500	0	0	0	316,000
Nebraska	1,279,965	0	0	396,238	24,797	0	0	0	480,000
Nevada	210,120	0	0	573,200	175,680	0	0	0	315,000
New Hampshire	360,407	0	0	350,731	185,862	0	0	0	316,000
New Jersey	3,599,988	1,427,886	1,326,897	0	0	0	0	402,229	1,867,000
New Mexico	0	0	0	427,545	548,455	0	0	0	320,000

STATE ALLOCATION BY NATIONAL ORGANIZATION AND GOVERNOR'S SHARE—TITLE V SENIOR COMMUNITY SERVICE EMPLOYMENT PROGRAM 1981–82 PROGRAM YEAR—Continued

State	Green Thumb	National Council on the Aging	National Council of Senior Citizens	National Retired Teachers Association/ American Association of Retired Persons	USDA forest service	National Center on Black Aged	Asociacion Nacional Pro Personas Mayores	National Urban League	Governor's share
New York	5,243,671	3,880,070	3,550,174	2,322,003	0	0	0	647,082	4,944,000
North Carolina	837,220	453,106	1,643,882	0	1,630,960	544,832	0	0	1,645,000
North Dakota	1,147,518	0	0	175,646	26,836	0	0	0	315,000
Ohio	2,626,387	1,074,000	2,301,000	2,520,000	78,034	0	0	452,579	2,983,000
Oklahoma	2,500,423	0	0	410,173	101,159	0	320,245	0	920,000
Oregon	1,616,834	305,357	0	534,960	768,849	0	0	0	698,000
Pennsylvania	5,030,660	2,107,338	2,712,300	1,238,131	315,411	0	0	429,160	3,745,000
Puerto Rico	1,027,188	0	0	1,090,408	105,404	0	0	0	729,000
Rhode Island	0	0	382,252	756,748	0	0	0	0	316,000
South Carolina	850,963	256,986	614,492	518,069	295,490	0	0	0	824,000
South Dakota	1,381,802	0	0	195,803	57,395	0	0	0	315,000
Tennessee	1,373,970	496,025	1,279,102	0	490,500	474,403	0	0	1,394,000
Texas	4,863,293	1,658,323	1,335,113	2,336,665	130,346	0	328,260	0	3,202,000
Utah	772,029	0	0	0	613,971	0	0	0	316,000
Vermont	104,054	970,555	0	0	115,391	0	0	0	315,000
Virgin Islands	0	0	0	0	0	0	0	0	555,750
Virginia	2,357,611	543,745	0	957,592	392,968	0	0	310,084	1,290,000
Washington	560,835	0	574,645	1,043,106	632,414	0	0	0	911,000
West Virginia	232,101	1,174,103	721,980	0	341,816	0	0	0	669,000
Wisconsin	3,342,595	0	1,827,820	0	476,450	0	0	310,135	1,346,000
Wyoming	512,815	0	0	193,265	252,920	0	0	0	315,000
American Samoa	0	0	0	0	0	0	0	0	555,750
Pacific Islands	0	0	0	0	0	0	0	0	366,750
National total	80,113,821	23,498,389	45,489,233	34,154,814	16,216,514	2,836,848	2,841,205	4,696,176	67,253,000

Source: Department of Labor, Office of Information, July 3, 1981

PROGRAM ENROLLMENT JOB INVENTORY—JULY 1, 1980 TO JUNE 30, 1981

	Jobs	Percent
Services to general community:		
Education	6,640	11.7
Health and hospitals	2,376	4.2
Housing/home rehabilitation	825	1.5
Employment assistance	682	1.2
Recreation, parks, and forests	4,987	8.8
Environmental quality	996	1.8
Public works and transportation	2,609	4.6
Social services	5,683	10.1
Other	3,781	6.7
Subtotal	28,579	50.6
Services to elderly community:		
Project administration	1,650	2.9
Health and home care	3,206	5.7
Housing/home rehabilitation	1,743	3.1
Employment assistance	813	1.4
Recreation/senior centers	5,028	8.9
Nutrition programs	7,086	12.5
Transportation	1,765	3.1
Outreach/referral	4,807	8.5
Other	1,838	3.3
Subtotal	27,936	49.4
Total	56,515	100.0

Source: Senior community service employment program, quarterly status report, June 30, 1981. Unpublished Department of Labor data

TITLE VI—GRANTS FOR INDIAN TRIBES

Older Indians generally have not received services and benefits equivalent to those provided other older persons under the title III program of grants for State and community programs. With the passage of the 1975 amendments to the Act, the Commissioner on Aging was authorized to allow Indian tribes to "bypass" the traditional title III State and area agency on aging funding mechanism and apply directly to the Commissioner for funds necessary to establish a social services progam. In order to award such grants, the Commissioner first had to make a determination that older Indians of a particular tribal organization would be better served by means of direct grants, and then could reserve funds from the States' title III allotment for funding the tribal organization. That authority, however, had never been exercised. In its report on the 1978 amendments the Senate Labor and Human Resources Committee indicated that this was due to the "cumbersome determination process" which required complicated grant applications and judgments by many levels of government before the Commissioner could issue a decision and that this process failed to recognize "tribal sovereign status." [1]

The 1978 amendments, therefore, revised the 1975 law to provide a separate title and funding authority for social and nutritional services for federally recognized tribal organizations. The law made Indians aged 60 years and over eligible. The 1981 amendments eliminated the requirement that Indians be 60 years and over in order to participate under the program and refers simply to "older" Indians. This change was made to provide flexibility to tribal organizations and was based on statistics presented to the House Committee on Education and Labor indicating that the life span of Indians is considerably shorter than that of other Americans.[2] The amendments also eliminated the prior law requirement that a State's allotment under title III be reduced by the amount attributable to Indians being served under title VI in the State.

Other provisions allowing for more flexibility in the administration of the program added by the 1981 amendments include: making legal and ombudsman services to older Indians an allowable rather than a required service; allowing funds that would otherwise be expended for nutritional services under title VI to be used for social services when the need for nutritional services is being met from other sources; and removing a prior law provision requiring that tribal organizations select only nonprofit private or-

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[1] U.S. Congress. Senate. Labor and Human Resources Committee. Older Americans Act of 1978. Rept. 95-855, 95th Congress, 2d session, May 15, 1978. p. 16.

[2] U.S. Congress. Committee on Education and Labor. Older Americans Act Amendments of 1981. House Rept. 97-70, 97th Congress., 1st session. Washington, U.S. Government Printing Office, 1981. p. 14.

ganizations to conduct project evaluations, giving authority to tribes to select an organization to carry out these activities.

The program received its first appropriation in 1980. For that year 85 tribal organizations received funds totaling $6 million with individual awards ranging from $65,000 to $100,000. In 1981 84 tribal organizations received a total of $6 million with awards in the same funding range.

Major Provisions

The purpose of title VI is to promote the delivery of social and nutritional services for older Indians which are comparable to services offered to other older persons under title III of the Act. Grants may be made to Indian tribal organizations representing at least 75 individuals aged 60 years or older. The law contains no age limit for elderly Indians in order to be eligible for services.

To qualify for funds, tribal organizations must submit an application to the Commissioner on Aging for approval. The law requires that each application meet specified criteria including the following: provide that the tribal organization evaluate the need for social and nutritional services among older Indians it represents; provide for information and referral services to assure that older Indians will have reasonably convenient access to services available under title VI; provide assurances that nutrition, legal, and ombudsman services offered under title VI will be in compliance with requirements contained under title III of the Act; and, provide for periodic evaluation of services.

The law requires that for any fiscal year in which less than $5 million are appropriated for the program tribal organizations are authorized to receive assistance in accordance with provisions of title III.

CONCLUSION

As envisioned by the framers of the legislation, the Older Americans Act was intended to be the tool that would provide assistance, direction, guidance, and advocacy for older Americans. The program's service delivery system is designed to magnify the effects of dollars spent. Instead of providing services and assistance directly, the State and area agencies on aging in a catalytic way draw upon and coalesce benefits of other programs and the resources of local public and nonprofit private organizations. Multiplication of benefits through cooperation and coordination is the key concept in the older Americans program. Congress will in the future, as it has in the past, examine the Older Americans Act for conceptual and mechanical soundness, and the extent to which its objectives are being realized.

TABLE 1.—OLDER AMERICANS ACT APPROPRIATIONS [1] FISCAL YEARS 1966–82

[In thousands of dollars]

	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982 [2]
Title II:																	
National Information and Resource Clearing House on Aging	([3])	([3])	([3])	([3])	([3])	([3])	([3])	None	None	None	None	None	2,000	2,000	2,000	1,800	1,721
Federal Council on the Aging	([3])	([3])	([3])	([3])	([3])	([3])	([3])	None	None	500	575	575	450	450	450	481	191
Title III:																	
Grants for State and Community Programs on Aging: [4]																	
Supportive services and centers [4]	5,000	6,000	10,550	16,000	9,000	9,000	30,000	68,000	68,000	82,000	93,000	122,000	153,000	196,970	246,970	252,000	240,869
Nutrition services—congregate—home-delivered	([3])	([3])	([3])	([3])	([3])	([3])	([3])	99,600	104,800	125,000	125,000	203,525	250,000	277,046	320,000	350,000	344,099
															(270,000)	(295,000)	(286,749)
															(50,000)	(55,000)	(57,350)
Multipurpose senior centers [4]	([3])	([3])	([3])	([3])	([3])	([3])	([3])	None	None	None	None	20,000	40,000	([5])	([5])	([5])	([5])
State agency activities [6]	None	None	None	None	4,000	4,000	5,000	12,000	12,000	15,000	17,035	17,000	19,000	22,500	22,500	22,675	21,673
Title IV:																	
Training, research, and discretionary projects and programs:																	
Training	500	1,493	2,245	2,285	2,610	3,000	8,000	8,000	10,000	8,000	10,000	14,200	17,000	17,000	17,000		
Research	1,000	1,507	4,155	4,155	3,250	2,800	9,000	9,000	7,000	7,000	8,000	8,500	8,500	8,500	8,500		
Demonstration projects [6]	([3])	([3])	([3])	([3])	None	2,200	9,100	16,000	16,000	8,000	13,800	12,000	15,000	15,000	25,000		
Mortgage insurance and interest grants for senior centers	([3])	([3])	([3])	([3])	([3])	([3])	([3])	None	None	None	None	None	None	None	None		([7])

TABLE 1.—OLDER AMERICANS ACT APPROPRIATIONS [1] FISCAL YEARS 1966–82—Continued

[In thousands of dollars]

	1966	1967	1968	1969	1970	1971	1972	1973	1974	1975	1976	1977	1978	1979	1980	1981	1982[7]
Multidisciplinary centers of gerontology	([3])	([3])	([3])	([3])	([3])	([3])	([3])	None	None	None	1,000	3,800	3,800	3,800	3,800		
Title V:																	
Community Service Employment for Older Americans	([3])	([3])	([3])	([3])	([3])	([3])	([3])	None	10,000	12,000	85,900	150,000	211,700	220,600	266,900	277,100	[8]277,100
Title VI:																	
Grants for Indian tribes	([3])	([3])	([3])	([3])	([3])	([3])	([3])	([3])	([3])	([3])	([3])	([3])	([3])	None	6,000	6,000	5,735
Total	6,500	9,000	16,950	23,000	18,860	21,000	61,100	212,600	227,800	257,500	354,310	551,600	720,450	763,866	919,120	950,556	913,563

[1] Source: For FY 1966–1980, Titles II, III, IV, and VI, the Administration on Aging of the U.S. Department of Health and Human Services, for FY 1981, based on the Supplemental Appropriations and Recisions Act of 1981 (P.L. 97-12) which superceded and revised Further Continuing Resolution for FY 1981 (P.L. 96-536); for FY 1982, Appendix to the Budget, FY 1983; and for Title V, Appendix to the Budget, various years. Title numbers are based on 1978 amendments. Excludes U.S.D.A. Commodities.

[2] The 1982 amounts shown are based on a continuing resolution (P.L. 97-161) in effect through Sept. 30, 1982 and an FY 1982 Supplemental Appropriation (P.L. 97-257) which provided $210.572 million for Title V to support the program through June 30, 1983.

[3] Not authorized.

[4] Between 1966 and 1970, Title III funds were allocated to States for social services. There was no specific appropriation for State or area planning activities. Beginning in 1970 funds were appropriated for Statewide planning. Beginning in 1973 funds were appropriated for area planning and social services; this appropriation was later termed social services. Funds for area agency planning are part of the services' allotment. In 1977 and 1978 there was a separate appropriation for multi-purpose senior centers under Title V of the Act; the 1978 amendments eliminated Title V and the appropriation for senior centers was incorporated under the appropriation for social services. The 1981 amendments changed the reference to "supportive" services rather than "social" services.

[5] Funds for multipurpose senior centers are included under the supportive services and centers appropriation.

[6] Funds were authorized under Title III for areawide demonstration projects from FY 1969 through FY 1977.

[7] The 1981 amendments eliminated the authorization for mortgage insurance.

[8] Funds are to cover only the last quarter of FY 1982.

Source: Evelyn H. Tager, updated by Carol O'Shaughnessy, Analysts in Social Legislation, Education, and Public Welfare Division, September 1982.

TABLE 2.—OLDER AMERICANS ACT AUTHORIZATION LEVELS, FISCAL YEARS 1982–84 CONTAINED IN PULBIC LAW 97–115, SIGNED DECEMBER 29, 1981

[In thousands of dollars]

	1982	1983	1984
Title II:			
National Information and Resource Clearing House for the Aging	None	None	None
Federal Council on the Aging	200,000	214,000	228,900
Title III:			
Grants for State and Community Programs on Aging:			
Supportive services and centers	306,000	327,400	350,300
Nutrition services:			
Congregate	319,100	341,400	365,300
Home delivered	60,000	64,200	68,700
USDA commodities	[1] 93,200	[1] 100,000	[1] 105,000
State agency activities	([2])	([2])	([2])
Title IV:			
Training, Research and Discretionary Projects and Programs	23,200	24,800	26,600
Title V:			
Community Service Employment for Older Americans	[3] 277,100	[3] 296,500	[3] 317,300
Title VI:			
Grants for Indian Tribes	6,500	7,000	7,500

[1] Plus such additional sums as may be necessary to maintain the level of reimbursement for the number of meals served in 1981.
[2] Level not specified by law.
[3] Plus such additional sums as may be necessary to maintain at least 54,200 part-time employment positions for eligible individuals.

OLDER AMERICANS ACT OF 1965, AS AMENDED

(42 U.S. Code § 6001, Et. Seq.)

Public Law 89-73 (July 14, 1965), as amended by P.L. 90-42 (July 1, 1967), P.L. 91-69 (Sept. 17, 1969), P.L. 92-258 (Mar. 22, 1972), P.L. 93-29 (May 3, 1973), P.L. 93-351 (July 12, 1974), P.L. 94-135 (Nov. 28, 1975), P.L. 95-65 (July 11, 1977), P.L. 95-478 (Oct. 18, 1978), and P.L. 97-115 (Dec. 29, 1981)

AN ACT To provide assistance in the development of new or improved programs to help older persons through grants to the States for community planning and services and for training, through research, development, or training project grants, and to establish within the Department of Health, Education, and Welfare an operating agency to be designated as the "Administration on Aging"

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That this Act may be cited as the "Older Americans Act of 1965".

(42 U.S.C. 3001 note) Enacted July 14, 1965, P.L. 89-73, sec. 1, 79 Stat. 219.

TITLE I—DECLARATION OF OBJECTIVES; DEFINITIONS

DECLARATION OF OBJECTIVES FOR OLDER AMERICANS

SEC. 101. The Congress hereby finds and declares that, in keeping with the traditional American concept of the inherent dignity of the individual in our democratic society, the older people of our Nation are entitled to, and it is the joint and several duty and responsibility of the governments of the United States and of the several States and their political subdivisions to assist our older people to secure equal opportunity to the full and free enjoyment of the following objectives:

(1) An adequate income in retirement in accordance with the American standard of living;

(2) The best possible physical and mental health which science can make available and without regard to economic status;

(3) Suitable housing, independently selected, designed and located with reference to special needs and available at costs which older citizens can afford;

(4) Full restorative services for those who require institutional care;

(5) Opportunity for employment with no discriminatory personnel practices because of age;

(6) Retirement in health, honor, dignity—after years of contribution to the economy;

(7) Pursuit of meaningful activity within the widest range of civic, cultural, education and training and recreational opportunities;

(8) Efficient community services, including access to low-cost transportation, which provide a choice in supported living arrangements and social assistance in a coordinated manner and which are readily available when needed;

(9) Immediate benefit from proven research knowledge which can sustain and improve health and happiness; and

(10) Freedom, independence, and the free exercise of individual initiative in planning and managing their own lives.

(42 U.S.C. 3001) Enacted July 14, 1965, P.L. 89-73, sec. 102, 79 Stat. 219; amended May 3, 1973, P.L. 93-29, sec. 102, 87 Stat. 30; amended October 18, 1978, P.L. 95-478, sec. 101, 92 Stat. 1513; amended December 29, 1981, P.L. 97-115, sec. 2(a)(1), 95 Stat. 1595.

DEFINITIONS

SEC. 102. For the purposes of this Act—

(1) The term "Secretary" means the Secretary of Health and Human Services, other than for purposes of title V.

(2) The term "Commissioner" means, unless the context otherwise requires, the Commissioner of the Administration on Aging.

(3) The term "State" includes the District of Columbia, the Virgin Islands, Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

(4) The term "nonprofit" as applied to any agency, institution, or organization means an agency, institution, or organization which is, or is owned and operated by, one or more corporations or associations no part of the net earnings of which inures, or may lawfully inure, to the benefit of any private shareholder or individual.

(5) The term "Indian" means a person who is a member of an Indian tribe.

(6) Except for the purposes of title VI of this Act, the term "Indian tribe" means any tribe, band, nation, or other organized group or community of Indians (including any Alaska Native village or regional or village corporation as defined in or established pursuant to the Alaska Native Claims Settlement Act (Public Law 92-203; 85 Stat. 688)) which (A) is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians; or (B) is located on, or in proximity to, a Federal or State reservation or rancheria.

(7) Except for the purposes of title VI of this Act, the term "tribal organization" means the recognized governing body of any Indian tribe, or any legally established organization of Indians which is controlled, sanctioned, or chartered by such governing body. In any case in which a contract is let or grant made to an organization to perform services benefiting more than one Indian tribe, the approval of each such Indian tribe shall be a prerequisite to the letting or making of such contract or grant.

(42 U.S.C. 3002) Enacted July 14, 1965, P.L. 89-73, sec. 102, 79 Stat. 219; amended July 1, 1967, P.L. 90-42, sec. 5(a), 81 Stat. 107; amended September 17, 1969, P.L. 91-69, sec. 10(a), 83 Stat. 114; amended November 28, 1975, P.L. 94-135, secs. 104(b), 114(a), 89 Stat. 714, 725; amended October 18, 1978, P.L. 95-478, sec. 503(a), 92 Stat. 1559; amended December 29, 1981, P.L. 97-115, sec. 2(a), 95 Stat. 1595.

TITLE II—ADMINISTRATION ON AGING

ESTABLISHMENT OF ADMINISTRATION ON AGING

SEC. 201. (a) There is established in the Office of the Secretary an Administration on Aging (hereinafter in this Act referred to as the "Administration") which shall be headed by a Commissioner on Aging (hereinafter in this Act referred to as the "Commissioner"). Except for title V, the Administration shall be the principal agency for carrying out this Act. In the performance of his functions, the Commissioner shall be directly responsible to the Office of the Secretary. The Secretary shall not approve any delegation of the functions of the Commissioner to any other officer not directly responsible to the Commissioner.

(b) The Commissioner shall be appointed by the President by and with the advice and consent of the Senate.

(42 U.S.C. 3011) Enacted July 14, 1965, P.L. 89-73, sec. 201, 79 Stat. 220; amended May 3, 1973, P.L. 93-29, sec. 201(a), 87 Stat. 30; amended July 12, 1974, P.L. 93-351, sec. 2(a), 88 Stat. 357; amended October 18, 1978, P.L. 95-478, sec. 503(b), 92 Stat. 1559.

FUNCTIONS OF COMMISSIONER

SEC. 202. (a) It shall be the duty and function of the Administration to—

(1) serve as the effective and visible advocate for the elderly within the Department of Health and Human Services and with other departments, agencies, and instrumentalities of the Federal Government by maintaining active review and commenting responsibilities over all Federal policies affecting the elderly;

(2) collect and disseminate information related to problems of the aged and aging;

(3) assist the Secretary in all matters pertaining to problems of the aged and aging;

(4) administer the grants provided by this Act;

(5) develop plans, conduct and arrange for research in the field of aging, and assist in the establishment of and carry out programs designed to meet the needs of older individuals for supportive services, including nutrition, hospitalization, education and training services (including preretirement training, and continuing education), low-cost transportation and housing, and health services;

(6) provide technical assistance and consultation to States and political subdivisions thereof with respect to programs for the aged and aging;

(7) prepare, publish, and disseminate educational materials dealing with the welfare of older individuals;

(8) gather statistics in the field of aging which other Federal agencies are not collecting and take whatever action is necessary to achieve coordination of activities carried out or assisted by all departments, agencies and instrumentalities of the Federal Government with respect to the collection, preparation, and dissemination of information relevant to older individuals.

(9) stimulate more effective use of existing resources and available services for the aged and aging;

(10) develop basic policies and set priorities with respect to the development and operation of programs and activities conducted under authority of this Act;

(11) provide for the coordination of Federal programs and activities related to such purposes;

(12) coordinate, and assist in, the planning and development by public (including Federal, State, and local agencies) and private organizations or programs for older individuals, with a view to the establishment of a nationwide network of comprehensive, coordinated services and opportunities for such individuals;

(13) convene conferences of such authorities and officials of public (including Federal, State, and local agencies) and nonprofit private organizations concerned with the development and operation of programs for older individuals as the Commissioner deems necessary or proper for the development and implementation of policies related to the purposes of this Act;

(14) develop and operate programs providing services and opportunities as authorized by this Act which are not otherwise provided by existing programs for older individuals;

(15) carry on a continuing evaluation of the programs and activities related to the purposes of this Act, with particular attention to the impact of medicare and medicaid, the Age Discrimination in Employment Act of 1967, and the programs of the National Housing Act relating to housing for the elderly and the setting of standards for the licensing of nursing homes, intermediate care homes, and other facilities providing care for older people;

(16) provide information and assistance to private organizations for the establishment and operation by them of programs and activities related to the purposes of this Act; and

(17) develop, in coordination with other agencies, a national plan for meeting the needs for trained personnel in the field of aging, and for training persons for carrying out programs related to the purposes of this Act, and conduct and provide for the conducting of such training.

(b) In order to strengthen the involvement of the Administration in the development of policy alternatives in long-term care and to insure that the development of community alternatives is given priority attention, the Commissioner shall—

(1) develop planning linkages with health systems agencies designated under section 1515 of the Public Health Service Act (42 U.S.C. 3001-4);

(2) participate in all departmental and interdepartmental activities which concern issues of institutional and noninstitutional long-term health care services development; and

(3) review and comment on all departmental regulations and policies regarding community health and supportive service development for the elderly.

(c) In executing his duties and functions under this Act and carrying out the programs and activities provided for by this Act, the Commissioner, in consultation with the Director of the ACTION Agency, shall take all possible steps to encourage and permit voluntary groups active in suportive services, including youth organi-

zations active at the high school or college levels, to participate and be involved individually or through representative groups in such programs or activities to the maximum extent feasible, through the performance of advisory or consultative functions, and in other appropriate ways.

(42 U.S.C. 3012) Enacted July 14, 1965, P.L. 89-73, sec. 202, 79 Stat. 220; amended May 3, 1973, P.L. 93-29, sec. 201(b), 87 Stat. 31; amended November 28, 1975, P.L. 94-135, sec. 114(c), 89 Stat. 725; amended October 18, 1978, P.L. 95-478, secs. 102(a), 503(b), 92 Stat. 1513, 1559; amended December 29, 1981, P.L. 97-115, secs. 2(b), 2(c), 3(d), 95 Stat. 1595, 1597.

FEDERAL AGENCY CONSULTATION

SEC. 203. (a) The Commissioner, in carrying out the purposes and provisions of this Act, shall advise, consult, and cooperate with the head of each Federal agency or department proposing or administering programs or services substantially related to the purposes of this Act, with respect to such programs or services. The head of each Federal agency or department proposing to establish programs and services substantially related to the purposes of this Act shall consult with the Commissioner prior to the establishment of such programs and services. The head of each Federal agency administering any program substantially related to the purposes of this Act, particularly administering any program set forth in subsection (b), shall, to achieve appropriate coordination, consult and cooperate with the Commissioner in carrying out such program.

(b) For the purposes of subsection (a), programs related to the purposes of this Act shall include—

(1) the Comprehensive Employment and Training Act,

(2) title II of the Domestic Volunteer Service Act of 1973,

(3) titles XVIII, XIX, and XX of the Social Security Act,

(4) sections 231 and 232 of the National Housing Act,

(5) the United States Housing Act of 1937,

(6) section 202 of the Housing Act of 1959,

(7) title I of the Housing and Community Development Act of 1974,

(8) the community schools program under the Elementary and Secondary Education Act of 1965, title I of the Higher Education Act of 1965, and the Adult Education Act, and

(9) sections 3, 5, 9, and 16 of the Urban Mass Transportation Act of 1964.

(42 U.S.C. 3013) As added May 3 1973, P.L. 93-29, sec. 201(c), 87 Stat. 32; amended October 18, 1978, P.L. 95-478, sec. 102(b), 92 Stat. 1513; amended December 29, 1981, P.L. 97-115, sec. 2(d), 95 Stat. 1595-1596.

FEDERAL COUNCIL ON THE AGING

SEC. 204. (a) There is established a Federal Council on the Aging to be composed of fifteen members appointed by the President with the advice and consent of the Senate for terms of three years without regard to the provisions of title 5, United States Code. Members shall be appointed so as to be representative of rural and urban older Americans, national organizations with an interest in aging, business, labor, and the general public. At least five of the members shall themselves be older individuals. No full-time officer or employee of the Federal Government may be appointed as a member of the Council.

(b)(1) Of the members first appointed, five shall be appointed for a term of one year, five shall be appointed for a term of two years, and five shall be appointed for a term of three years, as designated by the President at the time of appointment.

(2) Any member appointed to fill a vacancy occurring prior to the expiration of the term for which his predecessor was appointed shall be appointed only for the remainder of such term. Members shall be eligible for reappointment and may serve after the expiration of their terms until their successors have taken office.

(3) Any vacancy in the Council shall not affect its powers, but shall be filled in the same manner by which the original appointment was made.

(4) Members of the Council shall, while serving on business of the Council, be entitled to receive compensation at a rate not to exceed the daily rate specified for grade GS-18 in section 5332 of title 5, United States Code, including traveltime, and while so serving away from their homes or regular places of business, they may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as the expenses authorized by section 5703(b) of title 5, United States Code, for persons in the Government service employed intermittently.

(c) The President shall designate the Chairman from among the members appointed to the Council. The Council shall meet at the call of the Chairman at least quarterly.

(d) The Council shall—

(1) advise and assist the President on matters relating to the special needs of older Americans;

(2) assist the Commissioner in making an appraisal of needs pursuant to the functions carried out by the Commissioner under Section 411;

(3) review and evaluate, on a continuing basis, Federal policies regarding the aging and programs and other activities affecting the aging conducted or assisted by all Federal departments and agencies for the purpose of appraising their value and their impact on the lives of older Americans;

(4) serve as a spokesman on behalf of older Americans by making recommendations to the President, to the Secretary, the Commissioner, and to the Congress with respect to Federal policies regarding the aging and federally conducted or assisted programs and other activities relating to or affecting them;

(5) inform the public about the problems and needs of the aging by collecting and disseminating information, conducting or commissioning studies and publishing the results thereof, and by issuing publications and reports; and

(6) provide public forums for discussing and publicizing the problems and needs of the aging and obtaining information relating thereto by conducting public hearings, and by conducting or sponsoring conferences, workshops, and other such meetings.

(e) The Council shall have staff personnel, appointed by the Chairman, to assist it in carrying out its activities. The head of each Federal department and agency shall make available to the Council such information and other assistance as it may require to carry out its activities.

(f) Beginning with the year 1974 the Council shall make such interim reports as it deems advisable and an annual report of its findings and recommendations to the President not later than March 31 of each year. The President shall transmit each such report to the Congress together with his comments and recommendations.

(g) There are authorized to be appropriated to carry out the provisions of this section $200,000 for fiscal year 1982, $214,000 for fiscal year 1983, and $228,900 for fiscal year 1984.

(42 U.S.C. 3015) As added May 3, 1973, P.L. 93-29, sec. 201(c), 87 Stat. 33; amended November 28, 1975, P.L. 94-135, sec. 101, 89 Stat. 713; amended October 18, 1978, P.L. 95-478, secs. 102(e), 503(b), 92 Stat. 1514-1515, 1559; redesignated and amended December 29, 1981, P.L. 97-115, secs. 2(e), 2(f), 11(b)(1), 95 Stat. 1596, 1606.

ADMINISTRATION OF THE ACT

SEC. 205. (a) In carrying out the purposes of this act, the Commissioner is authorized to:

(1) provide consultative services and technical assistance to public or nonprofit private agencies and organizations;

(2) provide short-term training and technical instruction;

(3) conduct research and demonstrations;

(4) collect, prepare, publish, and disseminate special educational or informational materials, including reports of the projects for which funds are provided under this Act; and

(5) provide staff and other technical assistance to the Federal Council on the Aging.

(b) In administering his functions under this Act, the Commissioner may utilize the services and facilities of any agency of the Federal Government and of any other public or nonprofit agency or organization, in accordance with agreements between the Commissioner and the head thereof, and is authorized to pay therefor, in advance or by way of reimbursement, as may be provided in the agreement.

(c) for the purpose of carrying out this section, there are authorized to be appropriated such sums as may be necessary.

(42 U.S.C. 3016) As added May 3, 1973, P.L. 93-29, sec. 201(c), 87 Stat. 34; amended October 18, 1978, P.L. 95-478, sec. 102(f), 92 Stat. 1515; redesignated and amended December 29, 1981, P.L. 97-115, secs. 2(e), 2(g), 95 Stat. 1596.

EVALUATION

SEC. 206. (a) The Secretary shall measure and evaluate the impact of all programs authorized by this Act, their effectiveness in achieving stated goals in general, and in relation to their cost, their impact on related programs, and their structure and mechanisms for delivery of services, including, where appropriate, comparisons with appropriate control goups composed of persons who have not participated in such programs. Evaluations shall be conducted by persons not immediately involved in the administration of the program or project evaluated.

(b) The Secretary may not make grants or contracts under title IV of this Act until he has developed and published general standards to be used by him in evaluating the programs and projects assisted under such title. Results of evaluations conducted pursuant

to such standards shall be included in the reports required by section 207.

(c) In carrying out evaluations under this section, the Secretary shall, whenever possible, arrange to obtain the opinions of program and project participants about the strengths and weaknesses of the programs and projects, and conduct, where appropriate, evaluations which compare the effectiveness of related programs in achieving common objectives.

(d) The Secretary shall annually publish summaries and analyses of the results of evaluative research and evaluation of program and project impact and effectiveness, the full contents of which shall be transmitted to Congress and be accessible to the public.

(e) The Secretary shall take the necessary action to assure that all studies, evaluations, proposals, and data produced or developed with Federal funds shall become the property of the United States.

(f) Such information as the Secretary may deem necessary for purposes of the evaluations conducted under this section shall be made available to him, upon request, by the departments and agencies of the executive branch.

(g) The Secretary is authorized to use such sums as may be required, but not to exceed 1 per centum of the funds appropriated under this Act, or $1,000,000 whichever is greater, to conduct program and project evaluations (directly, or by grants or contracts) as required by this title. In the case of allotments from such an appropriation, the amount available for such allotments (and the amount deemed appropriated therefor) shall be reduced accordingly.

(42 U.S.C. 3017) As added May 3, 1973, P.L. 93-29, sec. 201(c), 87 Stat. 35; amended October 18, 1978, P.L. 95-478, sec. 102(g), 92 Stat. 1515; redesignated and amended December 29, 1981, P.L. 97-115, secs. 2(e), 2(h), 95 Stat. 1596.

REPORTS

SEC. 207. Not later than one hundred and twenty days after the close of each fiscal year, the Commissioner shall prepare and submit to the President for transmittal to the Congress a full and complete report on the activities carried out under this Act. Such annual reports shall include statistical data reflecting services and activities provided individuals during the preceding fiscal year.

(42 U.S.C. 3018) As added May 3, 1973, P.L. 93-29, sec. 201(c), 87 Stat. 35; redesignated December 29, 1981, P.L. 97-115, sec. 2(e), 95 Stat. 1596.

JOINT FUNDING OF PROJECTS

SEC. 208. Pursuant to regulations prescribed by the President, and to the extent consistent with the other provisions of this Act, where funds are provided for a single project by more than one Federal agency to any agency or organization assisted under this Act, the Federal agency principally involved may be designated to act for all in administering the funds provided. In such cases, a single non-Federal share requirement may be established according to the proportion of funds advanced by each Federal agency, and any such agency may waive any technical grant or contract requirement (as defined by such regulations) which is inconsistent with the similar requirements of the administering agency or which the administering agency does not impose.

(42 U.S.C. 3019) As added May 3, 1973, P.L. 93-29, sec. 201(c), 87 Stat. 35; redesignated December 29, 1981, P.L. 97-115, sec. 2(e), 95 Stat. 1596.

ADVANCE FUNDING

SEC. 209. (a) For the purpose of affording adequate notice of funding available under this Act, appropriations under this Act are authorized to be included in the appropriation Act for the fiscal year preceding the fiscal year for which they are available for obligation.

(b) In order to effect a transition to the advance funding method of timing appropriation action subsection (a) shall apply notwithstanding that its initial application will result in the enactment in the same year (whether in the same appropriation Act or otherwise) of two separate appropriations, one for the then current fiscal year and one for the succeeding fiscal year.

(42 U.S.C. 3020) As added May 3, 1973, P.L. 93-29, sec. 201(c), 87 Stat. 36; redesignated and amended December 29, 1981, P.L. 97-115, secs. 2(e), 2(i), 95 Stat. 1596.

APPLICATION OF OTHER LAWS

SEC. 210. (a) The provisions and requirements of the Act of December 5, 1974 (Public Law 93-510; 88 Stat. 1604), shall not apply to the administration of the provisions of this Act or to the administration of any program or activity under this Act.

(b) No part of the costs of any project under any title of this Act may be treated as income or benefits to any eligible individual (other than any wage or salary to such individual) for the purpose of any other program or provision of Federal or State law.

(42 U.S.C. 3020a) As added November 28, 1975, P.L. 94-135 sec. 102, 89 Stat. 713; amended October 18, 1978, P.L. 95-478, sec. 102(h), 92 Stat. 1515; redesignated and amended December 29, 1981, P.L. 97-115, secs. 2(e), 2(j), 95 Stat. 1596.

REDUCTION OF PAPERWORK

SEC. 211. In order to reduce unnecessary, duplicative, or disruptive demands for information, the Commissioner, in consultation with State agencies designated under section 305(a)(1), and other appropriate agencies and organizations, shall continually review and evaluate all requests by the Administration on Aging for information under this Act and take such action as may be necessary to reduce the paperwork required under this Act. The Commissioner shall request only such information as the Commissioner deems essential to carry out the purposes and provisions of this Act.

(42 U.S.C. 3020b) As added October 18, 1978, P.L. 95-478 sec. 102(i), 92 Stat. 1516; redesignated December 29, 1981, P.L. 97-115, sec. 2(e), 95 Stat. 1596.

CONTRACTING AND GRANT AUTHORITY

SEC. 212. None of the provisions of this Act shall be construed to prevent a recipient of a grant or a contract from entering into an agreement, subject to the approval of the State agency, with a profitmaking organization to carry out the provisions of this Act and of the appropriate State plan.

(42 U.S.C. 3020c) As added October 18, 1978, P.L. 95-478 sec. 102(i), 92 Stat. 1516; redesignated December 29, 1981, P.L. 97-115, sec. 2(e), 95 Stat. 1596.

SURPLUS PROPERTY ELIGIBILITY

SEC. 213. Any State or local government agency, and any nonprofit organization or institution, which receives funds appropriated for programs for older individuals under this Act, under title IV or title XX of the Social Security Act, or under titles VIII and X of the Economic Opportunity Act of 1964 and the Community Services Block Grant Act, shall be deemed eligible to receive for such programs, property which is declared surplus to the needs of the Federal Government in accordance with laws applicable to surplus property.

(42 U.S.C. 3020d) As added October 18, 1978, P.L. 95-478 sec. 102(i), 92 Stat. 1516; redesignated and amended December 29, 1981, P.L. 97-115, secs. 2(e), 2(k), 95 Stat. 1596.

TITLE III—GRANTS FOR STATE A' D COMMUNITY PROGRAMS ON AGING [1]

PART A—GENERAL PROVISIONS

PURPOSE; ADMINISTRATION

SEC. 301. (a) It is the purpose of this title to encourage and assist State and local agencies to concentrate resources in order to develop greater capacity and foster the development of comprehensive and coordinated service systems to serve older individuals by entering into new cooperative arrangements in each State with State and local agencies, and with the providers of supportive services, including nutrition services and multipurpose senior centers, for the planning for the provision of, and for the provision of supportive services, nutrition services, and multipurpose senior centers, in order to—

(1) secure and maintain maximum independence and dignity in a home environment for older individuals capable of self care with appropriate supportive services;

(2) remove individual and social barriers to economic and personal independence for older individuals; and

(3) provide a continuum of care for the vulnerable elderly.

(b)(1) In order to effectively carry out the purpose of this title, the Commissioner shall administer programs under this title through the Administration on Aging.

(2) In carrying out the provisions of this title, the Commissioner may request the technical assistance and cooperation of the Department of Education, the Department of Labor, the Department of Housing and Urban Development, the Department of Transportation, the Office of Community Services and such other agencies and departments of the Federal Government as may be appropriate.

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[1] Title III was completely revised by the Comprehensive Older Americans Act Amendments of 1978 (P.L. 95-478; 92 Stat. 1516). Although the revised title III is similar to the former title in certain respects, major changes were made by the Comprehensive Older Americans Act Amendments of 1978. These changes included (1) consolidation into the revised title III of programs contained in former title III (relating to social services), former title V (relating to multipurpose senior centers), and former title VII (relating to nutrition services); and (2) the establishment of separate authorizations for congregate nutrition services; and home delivered nutrition services. Prior to the amendments made by the Comprehensive Older Americans Act Amendments of 1978, former title III had been extensively revised by the Older Americans Comprehensive Services Amendments of 1973 (P.L. 93-29; 87 Stat. 30).

(42 U.S.C. 3022) As added October 18, 1978, P.L. 95-478 sec. 103(b), 92 Stat. 1517; amended December 29, 1981, P.L. 97-115, secs. 3(a), 3(d), 95 Stat. 1596, 1597.

DEFINITIONS

SEC. 302. For the purpose of this title—

(1) The term "comprehensive and coordinated system" means a system for providing all necessary supportive services, including nutrition services, in a manner designed to—

(A) facilitate accessibility to, and utilization of, all supportive services and, nutrition services provided within the geographic area served by such system by any public or private agency or organization;

(B) develop and make the most efficient use of supportive services and nutrition services in meeting the needs of older individuals; and

(C) use available resources efficiently and with a minimum of duplication.

(2) The term "information and referral source" means a location where the State or any public or private agency or organization—

(A) maintains current information with respect to the opportunities and services available to older individuals, and develops current lists of older individuals in need of services and opportunities; and

(B) employs a specially trained staff to inform older individuals of the opportunities and services which are available, and to assist such individuals to take advantage of such opportunities and services.

(3) The term "long-term care facility" means any skilled nursing facility, as defined in section 1861(j) of the Social Security Act, any intermediate care facility, as defined in section 1905(c) of the Social Security Act, any nursing home, as defined in section 1905(c) of the Social Security Act, any category of institutions regulated by a State pursuant to the provisions of section 1616(e) of the Social Security Act (for purposes of section 307(a)(12)), and any other similar adult care home.

(4) The term "legal services" means legal advice and representation by an attorney (including, to the extent feasible, counseling or other appropriate assistance by a paralegal or law student under the supervision of an attorney), and includes counseling or representation by a nonlawyer where permitted by law, to older individuals with economic or social needs.

(5) The term "planning and service area" means an area specified by a State agency under section 305(a)(1)(E).

(6) The term "State" means each of the several States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands and the Northern Mariana Islands.

(7) The term "State agency" means the State agency designated by a State under section 305(a)(1).

(8) The term "unit of general purpose local government" means—

(A) a political subdivision of the State whose authority is general and not limited to only one function or combination of related functions; or

(B) an Indian tribal organization.

(9) The term "education and training service" means a supportive service designed to assist older individuals to better cope with their economic, health, and personal needs through services such as consumer education, continuing education, health education, preretirement education, financial planning, and other education and training services which will advance the objectives of this Act.

(42 U.S.C. 3022) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1517; amended December 29, 1981, P.L. 97-115, secs. 3(b), 3(d), 95 Stat. 1596-1597.

AUTHORIZATION OF APPROPRIATIONS; USES OF FUNDS

SEC. 303. (a) There are authorized to be appropriated $300,000,000 for fiscal year 1979, $360,000,000 for fiscal year 1980, $480,000,000 for fiscal year 1981, $306,000,000 for fiscal year 1982, $327,400,000 for fiscal year 1983, and $350,300,000 for fiscal year 1984, for the purpose of making grants under part B of this title (relating to social services, supportive services and senior centers).

(b)(1) There are authorized to be appropriated $350,000,000 for fiscal year 1979, $375,000,000 for fiscal year 1980, $400,000,000 for fiscal year 1981, $319,100,000 for fiscal year 1982, $341,400,000 for fiscal year 1983, and $365,300,000 for fiscal year 1984, for the purpose of making grants under subpart 1 of part C of this title (relating to congregate nutrition services).

(2) There are authorized to be appropriated $80,000,000 for fiscal year 1979, $100,000,000 for fiscal year 1980, $120,000,000 for fiscal year 1981, $60,000,000 for fiscal year 1982, $64,200,000 for fiscal year 1983, and $68,700,000 for fiscal year 1984, for the purpose of making grants under subpart 2 of part C of this title (relating to home delivered nutrition services).

(c) Grants made under parts B and C of this title may be used for paying part of the cost of—

(1) the administration of area plans by area agencies on aging designated under section 305(a)(2)(A), including the preparation of area plans on aging consistent with section 306 and the evaluation of activities carried out under such plans; and

(2) the development of comprehensive and coordinated systems for supportive services, congregate and home delivered nutrition services, the development and operation of multipurpose senior centers, and the delivery of legal services.

(42 U.S.C. 3023) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1518; amended December 29, 1981, P.L. 97-115, secs. 3(c), 3(d), 95 Stat. 1597.

ALLOTMENT; FEDERAL SHARE

SEC. 304. (a)(1) From the sums appropriated under parts B and C for each fiscal year, each State shall be allotted an amount which bears the same ratio to such sums as the population aged 60 or older in such State bears to the population aged 60 or older in all States, except that (A) no State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which

the determination is made; (B) Guam, the Virgin Islands, and the Trust Territory of the Pacific Islands, shall each be allotted not less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made; (C) American Samoa and the Northern Mariana Islands shall each be allotted not less than one-sixteenth of 1 percent of the sum appropriated for the fiscal year for which the determination is made; and (D) no State shall be allotted an amount less than the State received for fiscal year 1978. For the purpose of the exception contained in clause (A) only, the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(2) The number of individuals aged 60 or older in any State and in all States shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(b) Whenever the Commissioner determines that any amount allotted to a State under part B or C for a fiscal year under this section will not be used by such State for carrying out the purpose for which the allotment was made, he shall make such allotment available for carrying out such purpose to one or more other States to the extent he determines that such other States will be able to use such additional amount for carrying out such purpose. Any amount made available to a State from an appropriation for a fiscal year in accordance with the preceding sentence shall, for purposes of this title, be regarded as part of such State's allotment (as determined under subsection (a)) for such year, but shall remain available until the end of the succeeding fiscal year.

(c) If the Commissioner finds that any State has failed to qualify under the State plan requirements of section 307, the Commissioner shall withhold the allotment of funds to such State referred to in subsection (a). The Commissioner shall disburse the funds so withheld directly to any public or private nonprofit institution or organization, agency, or political subdivision of such State submitting an approved plan under section 307, which includes an agreement that any such payment shall be matched in the proportion determined under subsection (d)(1)(C) for such State, by funds or in-kind resources from non-Federal sources.

(d)(1) From any State's allotment under this section for any fiscal year—

(A) such amount as the State agency determines, but not more than 8.5 percent thereof, shall be available for paying such percentage as the agency determines, but not more than 75 percent, of the cost of administration of area plans;

(B) such amount as the State agency determines to be adequate for conducting an effective ombudsman program under section 307(a)(12) shall be available for conducting such program; and

(C) the remainder of such allotment shall be available to such State only for paying such percentage as the State agency determines, but not more than 85 percent of the cost of supportive services, senior centers, and nutrition services under this title provided in the State as part of a comprehensive and coordinated system in planning and service areas for which there is an area plan approved by the State agency.

(2) The non-Federal share shall be in cash or in kind. In determining the amount of the non-Federal share, the Commissioner may attribute fair market value to services and facilities contributed from non-Federal sources.

(42 U.S.C. 3024) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1519; amended December 29, 1981, P.L. 97-115, sec. 4, 95 Stat. 1597.

ORGANIZATION

SEC. 305. (a) In order for a State to be eligible to participate in programs of grants to States from allotments under this title—

(1) the State shall, in accordance with regulations of the Commissioner, designate a State agency as the sole State agency to—

(A) develop a State plan to be submitted to the Commissioner for approval under section 307;

(B) administer the State plan within such State;

(C) be primarily responsible for the coordination of all State activities related to the purposes of this Act;

(D) serve as an effective and visible advocate for the elderly by reviewing and commenting upon all State plans, budgets, and policies which affect the elderly and providing technical assistance to any agency, organization, association, or individual representing the needs of the elderly; and

(E) divide the State into distinct planning and service areas (or in the case of a State specified in subsection (b)(5), designate the entire State as a single planning and service area), in accordance with guidelines issued by the Commissioner, after considering the geographical distribution of individuals aged 60 and older in the State, the incidence of the need for supportive services, nutrition services, multipurpose senior centers and legal services, the distribution of older individuals who have low incomes residing in such areas, the distribution of resources available to provide such services or centers, the boundaries of existing areas within the State which were drawn for the planning or administration of supportive services programs, the location of units of general purpose local government within the State, and any other relevant factors; and

(2) the State agency designated under clause (1) shall—

(A) except as provided in subsection (b)(5), designate for each such area after consideration of the views offered by the unit or units of general purpose local government in such area, a public or private nonprofit agency or organization as the area agency on aging for such area;

(B) provide assurances, satisfactory to the Commissioner, that the State agency will take into account, in connection with matters of general policy arising in the development and administration of the State plan for any fiscal year, the views of recipients of social-supportive services or nutrition services, or individuals using multipurpose senior centers provided under such plan;

(C) develop a formula, in accordance with guidelines issued by the Commissioner, for the distribution within the State of funds received under this title, taking into account, to the maximum extent feasible, the best available statistics on the geographic distribution of individuals aged 60 and older in the State, and publish such formula for review and comment;

(D) submit its formula developed under subclause (C) to the Commissioner for review and comment; and

(E) provide assurances that preference will be given to providing services to older individuals with the greatest economic or social needs and include proposed methods of carrying out the preference in the State plan.

(b)(1) In carrying out the requirement of clause (1) of subsection (a), the State may designate as a planning and service area any unit of general purpose local government which has a population of 100,000 or more. In any case in which a unit of general purpose local government makes application to the State agency under the preceding sentence to be designated as a planning and service area, the State agency shall, upon request, provide an opportunity for a hearing to such unit of general purpose local government. A State may designate as a planning and service area under clause (1) of subsection (a), any region within the State recognized for purposes of areawide planning which includes one or more such units of general purpose local government when the State determines that the designation of such a regional planning and service area is necessary for, and will enhance, the effective administration of the programs authorized by this title. The State may include in any planning and service area designated under clause (1) of subsection (a) such additional areas adjacent to the unit of general purpose local government or regions so designated as the State determines to be necessary for, and will enhance the effective administration of the programs authorized by this title.

(2) The State is encouraged in carrying out the requirement of clause (1) of subsection (a) to include the area covered by the appropriate economic development district involved in any planning and service area designated under such clause, and to include all portions of an Indian reservation within a single planning and service area, if feasible.

(3) The chief executive officer of each State in which a planning and service area crosses State boundaries, or in which an interstate Indian reservation is located, may apply to the Commissioner to request redesignation as an interstate planning and service area comprising the entire metropolitan area or Indian reservation. If the Commissioner approves such an application, he shall adjust the State allotments of the areas within the planning and service area in which the interstate planning and service area is established to reflect the number of older individuals within the area who will be served by an interstate planning and service area not within the State.

(4) Whenever a unit of general purpose local government, a region, a metropolitan area or an Indian reservation is denied designation under the provisions of clause (1) of subsection (a), such unit of general purpose local government, region, metropolitan

area, or Indian reservation may appeal the decision of the State agency to the Commissioner. The Commissioner shall afford such unit, region, metropolitan area, or Indian reservation an opportunity for a hearing. In carrying out the provisions of this paragraph, the Commissioner may approve the decision of the State agency, disapprove the decision of the State agency and require the State agency to designate the unit, region, area, or Indian reservation appealing the decision as a planning and service area, or take such other action as the Commissioner deems appropriate.

(5) A State which on or before October 1, 1980, had designated, with the approval of the Commissioner, a single planning and service area covering all of the older individuals in the State, in which the State agency was administering the area plan, may after that data designate one or more additional planning and service areas within the State to be administered by public or private nonprofit agencies or organizations as area agencies on aging, after considering the factors specified in subsection (a)(1)(E). The State agency shall continue to perform the functions of an area agency for any area of the State not included in a planning and service area for which an area agency has been designated.

(c) An area agency on aging designated under subsection (a) shall be—

(1) an established office of aging which is operating within a planning and service area designated under subsection (a);

(2) any office or agency of a unit of general purpose local government, which is designated for the purpose of serving as an area agency by the chief elected official of such unit;

(3) any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act on behalf of such combination for such purpose;

(4) any public or nonprofit private agency in a planning and service area which is under the supervision or direction for this purpose of the designated State agency and which can engage in the planning or provision of a broad range of supportive services, or nutrition services within such planning and service area; or

(5) in the case of a State specified in subsection (b)(5), the State agency;

and shall provide assurance, determined adequate by the State agency, that the area agency will have the ability to develop an area plan and to carry out, directly or through contractual or other arrangements, a program in accordance with the plan within the planning and service area. In designating an area agency on aging within the planning and service area. In designating an area agency on aging within the planning and service area or within any unit of general purpose local government designated as a planning and service area the State shall give preference to an established office on aging, unless the State agency finds that no such office within the planning and service area will have the capacity to carry out the area plan.

(42 U.S.C. 3025) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1520; amended December 29, 1981, P.L. 97-115, secs. 3(d), 5, 95 Stat. 1597-1598.

AREA PLANS

SEC. 306. (a) Each area agency on aging designated under section 305(a)(2)(A) shall, in order to be approved by the State agency, prepare and develop an area plan for a planning and service area for a two-, three-, or four-year period determined by the State agency, with such annual adjustments as may be necessary. Each such plan shall be based upon a uniform format for area plans within the State prepared in accordance with section 307(a)(1). Each such plan shall—

(1) provide, through a comprehensive and coordinated system, for supportive services, nutrition services, and, where appropriate, for the establishment, maintenance, or construction of multipurpose senior centers, within the planning and service area covered by the plan, including determining the extent of need for supportive services, nutrition services, and multipurpose senior centers in such area (taking into consideration, among other things, the number of older individuals with low incomes residing in such area), evaluating the effectiveness of the use of resources in meeting such need, and entering into agreements with providers of supportive services, nutrition services, or multipurpose senior centers in such area, for the provision of such services or centers to meet such need;

(2) provide assurances that an adequate proportion of the amount allotted for part B to the planning and service area will be expended for the delivery of—

(A) services associated with access to services (transportation, outreach, and information and referral);

(B) in-home services (homemaker and home health aide, visiting and telephone reassurance, and chore maintenance); and

(C) legal services;

and that some funds will be expended for each such category of services;

(3) designate, where feasible, a focal point for comprehensive service delivery in each community to encourage the maximum collocation and coordination of services for older individuals, and give special consideration to designating multipurpose senior centers as such focal point;

(4) provide for the establishment and maintenance of information and referral services in sufficient numbers to assure that all older individuals within the planning and service area covered by the plan will have reasonably convenient access to such services;

(5)(A) provide assurances that preference will be given to providing services to older individuals with the greatest economic or social needs and include proposed methods of carrying out the preference in the area plan; and

(B) assure the use of outreach efforts that will identify individuals eligible for assistance under this Act, with special emphasis on rural elderly, and inform such individuals of the availability of such assistance;

(6) provide that the area agency on aging will—

(A) conduct periodic evaluations of activities carried out under the area plan;

(B) furnish appropriate technical assistance to providers of supportive services, nutrition services, or multipurpose senior centers in the planning and service area covered by the area plan;

(C) take into account in connection with matters of general policy arising in the development and administration of the area plan, the views of recipients of services under such plan;

(D) serve as the advocate and focal point for the elderly within the community by monitoring, evaluating, and commenting upon all policies, programs, hearings, levies, and community actions which will affect the elderly;

(E) where possible, enter into arrangements with organizations providing day care services for children so as to provide opportunities for older individuals to aid or assist on a voluntary basis in the delivery of such services to children;

(F) where possible, enter into arrangements with local educational agencies, institutions of higher education, and nonprofit private organizations, to use services provided for older individuals under the community schools program under the Elementary and Secondary Education Act of 1965;

(G) establish an advisory council consisting of older individuals who are participants or who are eligible to participate in programs assisted under this Act, representatives of older individuals, local elected officials and the general public, to advise continuously the area agency on all matters relating to the development of the area plan, the administration of the plan and operations conducted under the plan;

(H) develop and publish methods by which priority of services is determined, particularly with respect to the delivery of services under clause (2); and

(I)(a) establish effective and efficient procedures for coordination between the programs assisted under this title and programs described in section 203(b).

(b) Each State, in approving area agency plans under this section, shall waive the requirement described in clause (2) of subsection (a) for any category of services described in such clause if the area agency on aging demonstrates to the State agency that services being furnished for such category in the area are sufficient to meet the need for such services in such area.

(c)(1) Subject to regulations prescribed by the Commissioner, an area agency on aging designated under section 305(a)(2)(A), or, in areas of a State where no such agency has been designated, the State agency, may enter into agreements with agencies administering programs under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act for the purpose of developing and implementing plans for meeting the common need for

transportation services of individuals receiving benefits under such Acts and older individuals participating in programs authorized by this title.

(2) In accordance with an agreement entered into under paragraph (1), funds appropriated under this title may be used to purchase transportation services for older individuals and may be pooled with funds made available for the provision of transportation services under the Rehabilitation Act of 1973, and titles XIX and XX of the Social Security Act.

(42 U.S.C. 3026) As added October 18, 1978, P.L. 95-478, sec. 109(b), 92 Stat. 1522, amended December 29, 1981, P.L. 97-115, secs. 9(d), 6, 95 Stat. 1597, 1599.

STATE PLANS

SEC. 307. (a) Except as provided in section 306(a), each State, in order to be eligible for grants from its allotment under this title for any fiscal year, shall submit to the Commissioner a State plan for a two-, three-, or four-year period determined by the State agency, with such annual revisions as are necessary, which meets such criteria as the Commissioner may by regulation prescribe. Each such plan shall—

(1) contain assurances that the State plan will be based upon area plans developed by area agencies on aging within the State designated under section 305(a)(2)(A) and that the State will prepare and distribute a uniform format for use by area agencies in developing area plans under section 306;

(2) provide that each area agency on aging designated under section 305(a)(2)(A) will develop and submit to the State agency for approval an area plan which complies with the provisions of section 306;

(3)(A) provide that the State agency will evaluate the need for supportive services (including legal services), nutrition services, and multipurpose senior centers within the State and determine the extent to which existing public or private programs meet such need; and

(B) provide assurances that the State agency will spend in each fiscal year, for services to older individuals residing in rural areas in the State assisted under this title, an amount equal to not less than 105 percent of the amount expended for such services (including amounts expended under title V and title VII) in fiscal year 1978;

(4) provide for the use of such methods of administration (including methods relating to the establishment and maintenance of personnel standards on a merit basis, except that the Commissioner shall exercise no authority with respect to the selection, tenure of office, or compensation of any individual employed in accordance with such methods) as are necessary for the proper and efficient administration of the plan, and, where necessary, provide for the reorganization and reassignment of functions to assure such efficient administration;

(5) provide that the State agency will afford an opportunity for a hearing upon request to any area agency on aging submitting a plan under this title, to any provider of a service

under such a plan, or to any applicant to provide a service under such a plan;

(6) provide that the State agency will make such reports, in such form, and containing such information, as the Commissioner may require, and comply with such requirements as the Commissioner may impose to insure the correctness of such reports;

(7) provide satisfactory assurance that such fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this title to the State, including any such funds paid to the recipients of a grant or contract;

(8) provide that the State agency will conduct periodic evaluations of activities and projects carried out under the State plan;

(9) provide for establishing and maintaining information and referral services in sufficient numbers to assure that all older individuals in the State who are not furnished adequate information and referral services under section 306(a)(4) will have reasonably convenient access to such services;

(10) provide that no supportive services, including nutrition services, will be directly provided by the State agency or an area agency on aging, except where, in the judgment of the State agency, provision of such services by the State agency or an area agency on aging is necessary to assure an adequate supply of such services;

(11) provide that subject to the requirements of merit employment systems of State and local governments, preferences shall be given to individuals aged 60 or older for any staff positions (full time or part time) in State and area agencies for which such individuals qualify;

(12) provide assurances that the State will—

(A) establish and operate, either directly or by contract or other arrangement with any public agency or other appropriate private non-profit organization which is not responsible for licensing or certifying long-term care services in the State or which is not an association (or an affiliate of such an association) of long-term care facilities (including any other residential facility for older individuals), a long-term care ombudsman program which will—

(i) investigate and resolve complaints made by or on behalf of older individuals who are residents of long-term care facilities relating to administrative action which may adversely affect the health, safety, welfare, and rights of such residents;

(ii) monitor the development and implementation of Federal, State, and local laws, regulations, and policies with respect to long-term care facilities in that State;

(iii) provide information as appropriate to public agencies regarding the problems of older individuals residing in long-term care facilities;

(iv) provide for training volunteers and promote the development of citizen organizations to participate in the ombudsman program; and

(v) carry out such other activities as the Commissioner deems appropriate;

(B) establish procedures for appropriate access by the ombudsman to long-term care facilities and patients' records, including procedures to protect the confidentiality of such records and ensure that the identity of any complainant or resident will not be disclosed without the written consent of such complainant or resident, or upon court order;

(C) establish a statewide uniform reporting system to collect and analyze data relating to complaints and conditions in long-term care facilities for the purpose of identifying and resolving significant problems, with provision for submission of such data to the agency or the State responsible for licensing or certifying long-term care facilities in the State and to the Commissioner on a regular basis; and

(D) establish procedures to assure that any files maintained by the ombudsman program shall be disclosed only at the descretion of the ombudsman having authority over the disposition of such files, except that the identity of any complainant or resident of a long-term care facility shall not be disclosed by such ombudsman unless—

(i) such complainant or resident, or his legal representative, consents in writing to such disclosure; or

(ii) such disclosure is required by court order;

(13) provide with respect to nutrition services that—

(A) each project providing nutrition services will be available to individuals aged 60 or older, and to their spouses, and may be made available to handicapped or disabled individuals who have not attained 60 years of age but who reside in housing facilities occupied primarily by the elderly at which congregate nutrition services are provided;

(B) primary consideration shall be given to the provision of meals in a congregate setting, except that each area agency (i) may award funds made available under this title to organizations for the provision of home delivered meals to older individuals in accordance with the provisions of subpart 2 of part C, based upon a determination of need made by the recipient of a grant or contract entered into under this title, without requiring that such organizations also provide meals to older individuals in a congregate setting; and (ii) shall, in awarding such funds, select such organizations in a manner which complies with the provisions of subparagraph (H);

(C)(i) each project will permit recipients of grants or contracts to charge participating individuals for meals furnished in accordance with guidelines established by the Commissioner, taking into consideration the income ranges of eligible individuals in local communities and other sources of income of the recipients of a grant or contract; and (ii) such charges will be used to increase the number of meals served by the project involved, to facili-

tate access to such meals, and to provide other supportive services directly related to nutrition services;

(D) in the case of meals served in a congregate setting, a site for such services and for comprehensive supportive services is furnished in as close proximity to the majority of eligible individuals' residences as feasible, with particular attention upon a multipurpose senior center, a school, a church, or other appropriate community facility, preferably within walking distance where possible, and where appropriate, transportation to such site is furnished;

(E) each project will establish outreach activities which assure that the maximum number of eligible individuals may have an opportunity to participate;

(F) each project may establish and administer the nutrition project with the advice of persons competent in the field of service in which the nutrition project is being provided, older individuals who will participate in the program, and of persons who are knowledgeable with regard to the needs of older individuals;

(G) each project will provide special menus, where feasible and appropriate, to meet the particular dietary needs arising from the health requirements, religious requirements, or ethnic backgrounds of eligible individuals;

(H) each area agency will give consideration, where feasible, in the furnishing of home delivered meals to the use of organizations which (i) have demonstrated an ability to provide home delivered meals efficiently and reasonably; and (ii) furnish assurances to the area agency that such an organization will maintain efforts to solicit voluntary support and that funds made available under this title to the organization will not be used to supplant funds from non-Federal sources; and

(I) each area agency shall establish procedures that will allow nutrition project administrators the option to offer a meal, on the same basis as meals are provided to elderly participants, to individuals providing volunteer services during the meal hours;

(14) provide, with respect to the acquisition (in fee simple or by lease for 10 years or more), alteration, or renovation of existing facilities (or the construction of new facilities in any area in which there are no suitable structures available, as determined by the State agency, after full consideration of the recommendations made by area agencies, to be a focal point for the delivery of services assisted under this title) to serve as multipurpose senior centers, that—

(A) the plan contains or is supported by reasonable assurances that (i) for not less than 10 years after acquisition, or not less than 20 years after the completion of construction, the facility will be used for the purpose for which it is to be acquired or constructed, unless for unusual circumstances the Commissioner waives the requirement of this division; (ii) sufficient funds will be available to meet the non-Federal share of the cost of acquisition or construction of the facility; (iii) sufficient funds will be

available when acquisition or construction is completed, for effective use of the facility for the purpose for which it is being acquired or constructed; and (iv) the facility will not be used and is not intended to be used for sectarian instruction or as a place for religious worship;

(B) the plan contains or is supported by reasonable assurances that, in the case of purchase or construction, there are no existing facilities in the community suitable for leasing as a multipurpose senior center;

(C) the plans and specifications for the facility are in accordance with regulations relating to minimum standards of construction, promulgated with particular emphasis on securing compliance with the requirements of the Act of August 12, 1968, commonly known as the Architectural Barriers Act of 1968;

(D) the plan contains or is supported by adequate assurance that any laborer or mechanic employed by any contractor or subcontactor in the performance of work on the facility will be paid wages at rates not less than those prevailing for similar work in the locality as determined by the Secretary of Labor in accordance with the Act of March 3, 1931 (40 U.S.C. 276a—276a-5, commonly known as the Davis-Bacon Act), and the Secretary of Labor shall have, with respect to the labor standards specified in this clause, the authority and functions set forth in reorganization plan numbered 14 of 1950 (15 F.R. 3176; 64 Stat. 1267), and section 2 of the Act of June 13, 1934 (40 U.S.C. 276c); and

(E) the plan contains assurances that the State agency will consult with the Secretary of Housing and Urban Development with respect to the technical adequacy of any proposed alteration or renovation;

(15) provide that with respect to legal services—

(A) the plan contains assurances that area agencies on aging will (i) enter into contracts with providers of legal services which can demonstate the experience or capacity to deliver legal services; (ii) include in any such contract provisions to assure that any recipient of funds under division (i) will be subject to specific restrictions and regulations promulgated under the Legal Services Corporation Act (other than restrictions and regulations governing eligibility for legal assistance under such Act and governing membership of local governing boards) as determined appropriate by the Commissioner; and (iii) attempt to involve the private bar in legal services activities authorized under this title, including groups within the private bar furnishing services to older individuals on a pro bono and reduced fee basis;

(B) the plan contains assurances that no legal services will be furnished unless the grantee—

(i) is a recipient of funds under the Legal Services Corporation Act; or

(ii) administers a program designed to provide legal services to all older individuals with social or econom-

ic need and has agreed to coordinate its services with existing Legal Services Corporation projects in the area in order to concentrate the use of funds provided under this title on individuals with the greatest such need but who are not eligible for legal assistance under the Legal Services Corporation Act;

and the area agency makes a finding after assessment, pursuant to standards for service promulgated by the Commissioner, that any grantee selected is the entity best able to provide the particular services;

(C) the State agency will provide for the coordination of the furnishing of legal services to older individuals within the State, and provide advice and technical assistance in the provision of legal services to older individuals within the State and support the furnishing of training and technical assistance for legal services for older individuals; and

(D) the plan contains assurances, to the extent practicable, that legal services furnished under the plan will be in addition to any legal services for older individuals being furnished with funds from sources other than this Act and that reasonable efforts will be made to maintain existing levels of legal services for older individuals; and

(16) provide, with respect to education and training services, assurances that area agencies on aging may enter into grants and contracts with providers of education and training services which can demonstrate the experience or capacity to provide such services (except that such contract authority shall be effective for any fiscal year only to such extent, or in such amounts, as are provided in appropriations Acts);

(17) provide assurances that, if a substantial number of the older individuals residing in any planning and service area in the State of limited English-speaking ability, then the State will require the area agency on aging for each such planning and service area—

(A) to utilize, in the delivery of outreach services under section 306(a)(2)(A), the services of workers who are fluent in the language spoken by a predominant number of such older individuals who are of limited English-speaking ability; and

(B) to designate an individual employed by the area agency on aging, or available to such area agency on aging on a full-time basis, whose responsibilities will include—

(i) taking such action as may be appropriate to assure that counseling assistance is made available to such older individuals who are of limited English-speaking ability in order to assist such older individuals in participating in programs and receiving assistance under this Act; and

(ii) providing guidance to individuals engaged in the delivery of supportive services under the area plan involved to enable such individuals to be aware of cultural sensitivities and to take into account effectively linguistic and cultural differences; and

(18) provide that the State agency, from funds allotted under section 304(a) for part B will use an amount equal to an amount not less than 1 percent of such allotment or $20,000, whichever is greater, for the purpose of carrying out the provisions of clause (12), except that (A) the requirement of this clause shall not apply in any fiscal year in which a State spends from State or local sources an amount equal to the amount required to be spent by this clause; and (B) the provisions of this clause shall not apply to American Samoa, Guam, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(b)(1) The Commissioner shall approve any State plan which he finds fulfills the requirements of subsection (a).

(2) The Commissioner, in approving any State plan under this section, may waive the requirement described in clause (3)(B) of subsection (a) if the State agency demonstrates to the Commissioner that the service needs of older individuals residing in rural areas in the State are being met or that the number of older individuals residing in such rural areas is not sufficient to require the State agency to comply with the requirement described in clause (3)(B) of subsection (a).

(c) The Commissioner shall not make a final determination disapproving any State plan, or any modification thereof, or make a final determination that a State is ineligible under section 305, without first affording the State reasonable notice and opportunity for a hearing.

(d) Whenever the Commissioner, after reasonable notice and opportunity for a hearing to the State agency, finds that—

(1) the State is not eligible under section 305,

(2) the State plan has been so changed that it no longer complies substantially with the provisions of subsection (a), or

(3) in the administration of the plan there is a failure to comply substantially with any such provision of subsection (a),

the Commissioner shall notify such State agency that no further payments from its allotments under section 304 and section 308 will be made to the State (or, in his discretion, that further payments to the State will be limited to projects under or portions of the State plan not affected by such failure), until he is satisfied that there will no longer be any failure to comply. Until he is so satisfied, no further payments shall be made to such State from its allotments under section 304 and section 308 (or payments shall be limited to projects under or portions of the State plan not affected by such failure). The Commissioner shall, in accordance with regulations he shall prescribe, disburse the funds so withheld directly to any public or nonprofit private organization or agency or political subdivision of such State submitting an approved plan in accordance with the provisions of this section. Any such payment shall be matched in the proportions specified in section 304.

(e)(1) A State which is dissatisfied with a final action of the Commissioner under subsection (b), (c), or (d) may appeal to the United States court of appeals for the circuit in which the State is located, by filing a petition with such court within 30 days after such final action. A copy of the petition shall be forthwith transmitted by the clerk of the court to the Commissioner, or any officer designated by

him for such purpose. The Commissioner thereupon shall file in the court the record of the proceedings on which he based his action, as provided in section 2112 of title 28, United States Code.

(2) Upon the filing of such petition, the court shall have jurisdiction to affirm the action of the Commissioner or to set it aside, in whole or in part, temporarily or permanently, but until the filing of the record, the Commissioner may modify or set aside his order. The findings of the Commissioner as to the facts, if supported by substantial evidence, shall be conclusive, but the court, for good cause shown, may remand the case to the Commissioner to take further evidence, and the Commissioner shall, within 30 days, file in the court the record of those further proceedings. Such new or modified findings of fact shall likewise be conclusive if supported by substantial evidence. The judgment of the court affirming or setting aside, in whole or in part, any action of the Commissioner shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of title 28, United States Code.

(3) The commencement of proceedings under this subsection shall not, unless so specifically ordered by the court, operate as a stay of the Commissioner's action.

(42 U.S.C. 3027) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1524; amended December 29, 1981, P.L. 97-115, sec. 3(d), 7, 95 Stat. 1597, 1598-1599.

PLANNING, COORDINATION, EVALUATION, AND ADMINISTRATION OF STATE PLANS

SEC. 308. (a)(1) Amounts appropriated under section 303 may be used to make grants to States for paying such percentages as each State agency determines, but not more than 75 percent, of the cost of the administration of its State plan, including the preparation of the State plan, the evaluation of activities carried out under such plan, the collection of data and the carrying out of analyses related to the need for supportive services, nutrition services, and multipurpose senior centers within the State, and dissemination of information so obtained, the provision of short-term training to personnel of public or nonprofit private agencies and organizations engaged in the operation of programs authorized by this Act, and the carrying out of demonstration projects of statewide significance relating to the initiation, expansion, or improvement of services assisted under this title.

(2) Any sums received by a State under this section for part of the cost of the administration of its State plan which the State determines is not needed for such purpose may be used by the State to supplement the amount available under section 304(d)(1)(A) to cover part of the cost of the administration of area plans.

(3) Any State which has designated a single planning and service area under section 305(a)(1)(E) covering all, or substantially all, of the older individuals in such State, as determined by the Commissioner, may elect to pay part of the costs of the administration of State and area plans either out of sums received under this section or out of sums made available for the administration of area plans under section 304(d)(1)(A), but shall not pay such costs out of sums received or allotted under both such sections.

(b)(1) From the sums appropriated for any fiscal year under section 303 for carrying out the purposes of this section, each State shall be allotted an amount which bears the same ratio to such sums as the population aged 60 or older in such State bears to the population aged 60 or older in all States, except that (A) no State shall be allotted less than one-half of 1 percent of the sum appropriated for the fiscal year for which the determination is made, or $300,000, whichever is greater, and (B) Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands shall be each allotted no less than one-fourth of 1 percent of the sum appropriated for the fiscal year for which the determination is made, or $75,000, whichever is greater. For the purpose of the exception contained in clause (A), the term "State" does not include Guam, American Samoa, the Virgin Islands, the Trust Territory of the Pacific Islands, and the Northern Mariana Islands.

(2)(A) Any State which desires to receive amounts, in addition to amounts allotted to such State under paragraph (1), to be used in the administration of its State plan in accordance with subsection (a) may transmit an application to the Commissioner in accordance with this paragraph. Any such application shall be transmitted in such form, and according to such procedures, as the Commissioner may require, except that such application may not be made as part of, or as an amendment to, the State plan.

(B) The Commissioner may approve any application transmitted by a State under subparagraph (A) if the Commissioner determines, based upon a particularized showing of need, that—

(i) the State will be unable to fully and effectively administer its State plan and to carry out programs and projects authorized by this title unless such additional amounts are made available by the Commissioner;

(ii) the State is making full and effective use of its allotment under paragraph (1) and of the personnel of the State agency and area agencies designated under section 305(a)(2)(A) in the administration of its State plan in accordance with subsection (a); and

(iii) the State agency and area agencies of such State designated under section 305 are carrying out, on a full-time basis, programs and activities which are in furtherance of the purposes of this Act.

(C) The Commissioner may approve that portion of the amount requested by a State in its application under subparagraph (A) which he determines has been justified in such application.

(D) Amounts which any State may receive in any fiscal year under this paragraph may not exceed three-fourths of 1 percent of the sum of the amounts allotted under section 304(a) to such State to carry out the State plan for such fiscal year.

(E) No application by a State under subparagraph (A) shall be approved unless it contains assurances that no amounts received by the State under this paragragh will be used to hire any individual to fill a job opening created by the action of the State in laying off or terminating the employment of any regular employee not supported under this Act in anticipation of filling the vacancy so cre-

ated by hiring an employee to be supported through use of amounts received under this pargraph.

(3) Each State shall be entitled to an allotment under this section for any fiscal year in an amount which is not less than the amount of the allotment to which such State was entitled under paragraph (1) for the fiscal year ending June 30, 1975.

(4) The number of individuals aged 60 or older in any State and in all States shall be determined by the Commissioner on the basis of the most recent satisfactory data available to him.

(5) Notwithstanding any other provision of this title, with respect to funds received under section 303(b) (1) and (2), a State may elect in its plan under section 307(a)(13) regarding part C of this title, to transfer a portion of the funds appropriated between subpart 1 and subpart 2 of part C, for use as the State considers appropriate to meet the needs of the area served. The Commissioner shall approve any such transfer unless he determines that such transfer is not consistent with the purposes of this Act.

(6) Notwithstanding any other provisions of this title, with respect to funds received under subsection (a) and subsection (b) of section 303, a State may elect to transfer not more than 20 per centum of the funds appropriated for any fiscal year between programs under part B and part C of this title, for use as the State considers appropriate. The State shall notify the Commissioner of any such election.

(c) The amounts of any State's allotment under subsection (b) for any fiscal year which the Commissioner determines will not be required for that year for the purposes described in subsection (a)(1) shall be available to provide services under part B or part C, or both, in the State.

(42 U.S.C. 3028) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1530; amended December 29, 1981, P.L. 97-115, secs. 3(d), 8, 95 Stat. 1597, 1600.

PAYMENTS

SEC. 309. (a) Payments of grants or contracts under this title may be made (after necessary adjustments resulting from previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments, as the Commissioner may determine. From a State's allotment for a fiscal year which is available under section 308 the Commissoner may pay to a State which does not have a State plan approved under section 307 such amounts as he deems appropriate for the purpose of assisting such State in developing a State plan.

(b)(1) For each fiscal year, not less than 25 percent of the non-Federal share of the total expenditures under the State plan which is required by section 304(d) shall be met from funds from State and local public sources.

(2) Funds required to meet the non-Federal share required by section 304(d)(1)(B), in amounts exceeding the non-Federal share required prior to fiscal year 1981, shall be met from State sources.

(c) A State's allotment under section 304 for a fiscal year shall be reduced by the percentage (if any) by which its expenditures for such year from State sources under its State plan approved under

section 307 are less than its expenditures from such sources for the preceding fiscal year.

(42 U.S.C. 3029) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1532.

DISASTER RELIEF REIMBURSEMENTS

SEC. 310. (a)(1) The Commissioner may provide reimbursements to any State, upon application for such reimbursement, for funds such State makes available to area agencies in such State for the delivery of supportive services during any major disaster declared by the President in accordance with the Disaster Relief Act 1974.

(2) Total payments to all States under paragraph (1) in any fiscal year shall not exceed 5 percent of the total amount appropriated and available for carrying out the purposes of section 422.

(b)(1) At the beginning of each fiscal year the Commissioner shall set aside, for payment to States under subsection (a), an amount equal to 5 percent of the total amount appropriated and available for carrying out the purposes of section 422.

(2) Amounts set aside under paragraph (1) which are not obligated by the end of the third quarter of any fiscal year shall be made available for carrying out the purposes of section 422.

(c) Nothing in this section shall be construed to prohibit expenditures by States for disaster relief for older individuals in excess of amounts reimbursable under this section, by using funds made available to them under other sections of this Act or under other provisions of Federal or State law, or from private sources.

(42 U.S.C. 3030) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1533; amended December 29, 1981, P.L. 97-115, secs. 3(d), 11(b)(2), 95 Stat. 1597, 1606.

AVAILABILITY OF SURPLUS COMMODITIES

SEC. 311. (a)(1) Agricultural commodities and products purchased by the Secretary of Agriculture under section 32 of the Act of August 24, 1935 (7 U.S.C. 612c), shall be donated to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this title.

(2) The Commodity Credit Corporation shall dispose of food commodities under section 416 of the Agricultural Act of 1947 (7 U.S.C. 1431) by donating them to a recipient of a grant or contract to be used for providing nutrition services in accordance with the provisions of this title.

(3) Dairy products purchased by the Secretary of Agriculture under section 709 of the Food and Agriculture Act of 1965 (7 U.S.C. 1446a-1) shall be used to meet the requirements of programs providing nutrition services in accordance with the provisions of this title.

(4) Subject to the authorization of appropriations specified in subsection (d), in donating commodities under this subsection, the Secretary of Agriculture shall maintain an annually programmed level of assistance of not less than 15 cents per meal during fiscal year 1976, 25 cents per meal during fiscal year 1977 and fiscal year 1978, and 30 cents per meal for each fiscal year thereafter. The amount specified in this paragraph shall be adjusted on an annual basis for each fiscal year after June 30, 1975, to reflect changes in the series for food away from home of the Consumer Price Index

published by the Bureau of Labor Statistics of the Department of Labor. Such adjustment shall be computed to the nearest one-fourth cent. Among the commodities delivered under this subsection, the Secretary shall give special emphasis to high protein foods, meat, and meat alternates. The Secretary of Agriculture, in consultation with the Commissioner, is authorized to prescribe the terms and conditions respecting the donating of commodities under this subsection.

(b)(1) Notwithstanding any other provision of law, a State may, for purposes of the programs authorized by this act, elect to receive cash payments in lieu of donated foods for all or any portion of its project. In any case in which a State makes such an election, the Secretary of Agriculture shall make cash payments to such State in an amount equivalent in value to the donated foods which the State otherwise would have received if such State had retained its commodity distribution.

(2) When such payments are made, the State agency shall promptly and equitably disburse any cash it receives in lieu of commodities to recipients of grants or contracts. Such disbursements shall only be used by such recipients of grants or contracts to purchase United States agricultural commodities and other foods for their nutrition projects.

(3) Nothing in this subsection shall be construed to authorize the Secretary of Agriculture to require any State to elect to receive cash payments under this subsection.

(c)(1) There are authorized to be appropriated $93,200,000 for fiscal year 1982, $100,000,000 for fiscal year 1983, and $105,000,000 for fiscal year 1984 to carry out the provisions of this section (other than the provisions of subsection (a)(1)) and such additional sums as may be necessary for each such fiscal year to maintain the level of reimbursement for the number of meals served under such provisions in fiscal year 1981.

(2) In any fiscal year in which compliance with subsection (a)(4) of this section costs more than the amount authorized under paragraph (1) of this subsection for that fiscal year the Secretary of Agriculture shall reduce the cents per meal level determined pursuant to subsection (a)(4) for that fiscal year as necessary to meet the authorization of appropriations for that fiscal year.

MULTIPURPOSE SENIOR CENTERS: RECAPTURE OF PAYMENTS

SEC. 312. If, within 10 years after acquisition, or within 20 years after the completion of construction, of any facility for which funds have been paid under this title—

(1) the owner of the facility ceases to be a public or nonprofit private agency or organization; or

(2) the facility ceases to be used for the purposes for which it was acquired (unless the Commissioner determines in accordance with regulations, that there is good cause for releasing the applicant or other owner from the obligation to do so);

the United States shall be entitled to recover from the applicant or other owner of the facility an amount which bears to the then value of the facility (or so much thereof as constituted an approved project or projects) the same ration as the amount of such Federal

funds bore to the cost of the facility financed with the aid of such funds. Such value shall be determined by agreement of the parties or by action brought in the United States district court for the district in which such facility is situated.

AUDIT

SEC. 313. The Commissioner and the Comptroller General of the United States or any of their duly authorized representatives shall have access for the purpose of audit and examination to any books, documents, papers, and records that are pertinent to a grant or contract received under this title.

(42 U.S.C. 3030c) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1535.

PART B—SUPPORTIVE SERVICE AND SENIOR CENTERS

PROGRAM AUTHORIZED

SEC. 321. (a) The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for any of the following supportive services:

(1) health, education and training, welfare, informational, recreational, homemaker, counseling, or referral services;

(2) transportation services to facilitate access to supportive services or nutrition services, or both;

(3) services designed to encourage and assist older individuals to use the facilities and services available to them;

(4) services designed (A) to assist older individuals to obtain adequate housing, including residential repair and renovation projects designed to enable older individuals to maintain their homes in conformity with minimum housing standards; (B) to adapt homes to meet the needs of older individuals suffering from physical disabilities; or (C) to prevent unlawful entry into residences of elderly individuals, through the installation of security devices and through structural modifications or alterations of such residences;

(5) services designed to assist older individuals in avoiding institutionalization, including preinstitution evaluation and screening and home health services, homemaker services, shopping services, escort services, reader services, letter writing services, and other similar services designed to assist such individuals to continue living independently in a home environment;

(6) services designed to provide legal services and other counseling services and assistance, including tax counseling and assistance and financial counseling, to older individuals;

(7) services designed to enable older individuals to attain and maintain physical and mental well-being through programs of regular physical activity and exercise;

(8) services designed to provide health screening to detect or prevent illnesses, or both, that occur most frequently in older individuals;

(9) services designed to provide preretirement and second career counseling for older individuals;

(10) services of an ombudsman at the State level to receive, investigate, and act on complaints by older individuals who are residents of long-term care facilities and to advocate the well-being of such individuals;

(11) services which are designed to meet the unique needs of older individuals who are disabled;

(12) services to encourage the employment of older workers, including job counseling and, where appropriate, job development, referral, and placement;

(13) crime prevention services and victim assistance programs for older individuals;

(14) a program, to be known as "Senior Opportunities and Services", designed to identify and meet the needs of older, poor individuals 60 years of age or older in one or more of the following areas: (A) development and provision of new volunteer services; (B) effective referral to existing health, employment, housing, legal, consumer, transportation, and other services; (C) stimulation and creation of additional services and programs to remedy gaps and deficiencies in presently existing services and programs; and (D) such other services as the Commissioner may determine are necessary or especially appropriate to meet the needs of the older poor and to assure them greater self-sufficiency; or

(15) any other services;

if such services meet standards prescribed by the Commissioner and are necessary for the general welfare of older individuals.

(b)(1) The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for the acquisition, alteration, or renovation of existing facilities, including mobile units, and, where appropriate, construction of facilities to serve as multipurpose senion centers which shall be community facilities for the organization and provision of a broad spectrum of services, including provision of health, social, nutritional, and educational services and provision of facilities for recreational activities for older individuals.

(2) Funds made available to a State under this part may be used, for the purpose of assisting in the operation of multipurpose senior centers, to meet all or part of the costs of compensating professional and technical personnel required for the operation of multipurpose senior centers.

(42 U.S.C. 3030d) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1535; amended December 29, 1981, P.L. 97-115, secs. 3(d), 10(a)-10(c), 95 Stat. 1597, 1600-1601.

PART C—NUTRITION SERVICE

Subpart 1—Congregate Nutrition Services

PROGRAM AUTHORIZED

SEC. 331. The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects—

(1) which, 5 or more days a week, provide at least one hot or other appropriate meal per day and any additional meals which the recipient of a grant or contract under this subpart

may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council;

(2) which shall be provided in congregate settings; and

(3) which may include nutrition education services and other appropriate nutrition services for older individuals.

(42 U.S.C. 3030e) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1536.

Subpart 2—Home Delivered Nutrition Services

PROGRAM AUTHORIZED

SEC. 336. The Commissioner shall carry out a program for making grants to States under State plans approved under section 307 for the establishment and operation of nutrition projects for older individuals which, 5 or more days a week, provide at least one home delivered hot, cold, frozen, dried, canned, or supplemental foods (with a satisfactory storage life) meal per day and any additional meals which the recipient of a grant or contract under this subpart may elect to provide, each of which assures a minimum of one-third of the daily recommended dietary allowances as established by the Food and Nutrition Board of the National Academy of Sciences-National Research Council.

(42 U.S.C. 3030f) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1536.

CRITERIA

SEC. 337. The Commissioner, in consultation with organizations of and for the aged, blind, and disabled, and with representatives from the American Dietetic Association, the Association of Area Agencies on Aging, the National Association of Nutrition and Aging Services Programs, the National Association of Meals Programs, Incorporated, and any other appropriate group, shall develop minimum criteria of efficiency and quality for the furnishing of home delivered meal services for projects described in section 336. The criteria required by this section shall take into account the ability of established home delivered meals programs to continue such services without major alteration in the furnishing of such services.

(42 U.S.C. 3030g) As added October 18, 1978, P.L. 95-478, sec. 103(b), 92 Stat. 1536; amended December 29, 1981, P.L. 97-115, sec. 10(e), 95 Stat. 1601.

TITLE IV—TRAINING, RESEARCH, AND DISCRETIONARY PROJECTS AND PROGRAMS [1]

PART A—EDUCATION AND TRAINING

TRAINING AND RECRUITING PERSONNEL FOR THE FIELD OF AGING

SEC. 411. The Commissioner may make grants to any public or nonprofit private agency, organization, or institution and may enter into contracts with any agency, organization, or institution,

[1] Title IV was completely revised by the Older Americans Act Amendments of 1981 (P.L. 97-115; 95 Stat. 1595).

to assist the Commissioner in recruiting persons to enter the field of aging, training volunteers and persons employed in or preparing for employment in the field of aging (including such stipends to persons participating in training programs as the Commissioner may find appropriate), technical assistance, and other activities related to such training.

(42 U.S.C. 3031) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1601.

MULTIDISCIPLINARY CENTERS OF GERONTOLOGY

SEC. 412. The Commissioner may make grants to public and private nonprofit agencies, organizations, and institutions for the purpose of establishing or supporting multidisciplinary centers of gerontology, and gerontology centers of special emphasis.

(42 U.S.C. 3032) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1601.

PART B—RESEARCH, DEMONSTRATIONS, AND OTHER ACTIVITIES

RESEARCH AND DEVELOPMENT PROJECTS

SEC. 421. The Commissioner may make grants to any public or nonprofit agency, organization, or institution, and may enter into contracts with any agency, organization, or institution, or individual to support research and development related to the purposes of this Act, evaluation of the results of such research and development activities, and collection and dissemination of information concerning research findings, demonstration results, and other materials developed in connection with activities assisted under this title, and conducting of conferences and other meetings for purposes of exchange of information and other activities related to the purposes of this title.

(42 U.S.C. 3035) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1601-1602.

DEMONSTRATION PROJECTS

SEC. 422. (a) The Commissioner may, after consultation with the State agency in the State involved, make grants to any public agency or nonprofit private organization or enter into contracts with any agency or organization within such State for paying part or all of the cost of developing or operating nationwide, statewide, regional, metropolitan area, county, city, or community model projects which will demonstrate methods to improve or expand supportive services or nutrition services or otherwise promote the well-being of older individuals. The Commissioner shall give special consideration to the funding of rural area agencies on aging to conduct model projects devoted to the special needs of the rural elderly. Such projects shall include alternative health care delivery systems, advocacy and outreach programs, and transportation services.

(b) In making grants and contracts under this section, the Commissioner shall give special consideration to projects designed to—

(1) meet the special health care needs of the elderly, including—

(A) the location of older individuals who are in need of mental health services;

(B) the provision of, or arrangement for the provision of, medical differential diagnoses of older individuals to distinguish between their need for mental health services and other medical care;

(C) the specification of the mental health needs of older individuals, and the mental health and support services required to meet such needs; and

(D) the provision of—

(i) the mental health and support services specified in clause (C) in the communities; or

(ii) such services for older individuals in nursing homes and intermediate care facilities, and training of the employees of such homes and facilities in the provision of such services;

(2) assist in meeting the special housing needs of older individuals by—

(A) providing financial assistance to such individuals, who own their own homes, necessary to enable them (i) to make the repairs or renovations to their homes, which are necessary for them to meet minimum standards, and (ii) to install security devices, and to make structural modifications or alterations, designed to prevent unlawful entry; and

(B) studying and demonstrating methods of adapting existing housing, or construction of new housing, to meet the needs of older individuals suffering from physical disabilities;

(3) provide education and training to older individuals designed to enable them to lead more productive lives by broadening the education, occupational, cultural, or social awareness of such older individuals;

(4) provide preretirement education information and relevant services (including the training of personnel to carry out such programs and the conducting of research with respect to the development and operation of such programs) to individuals planning retirement;

(5) meet the special needs, of, and improve the delivery of services to, older individuals, who are not receiving adequate services under other provisions of this Act, with emphasis on the needs of low-income, minority, Indian, and limited English-speaking individuals and the rural elderly;

(6) develop or improve methods of coordinating all available supportive services for the homebound elderly, blind, and disabled by establishing demonstration projects in ten States, in accordance with subsection (c); and

(7) improve transportation systems for the rural elderly.

(c) The Commissioner shall consult with the Commissioner of the Rehabilitation Services Administration, the Commissioner of the Social Security Administration, and the Surgeon General of the Public Health Service, to develop procedures for—

(1) identifying elderly, blind, and disabled individuals who need social supportive services;

(2) compiling a list in each community of all services available to the elderly, blind, and disabled; and

best copy available

(3) establishing an information and referral service within the appropriate community agency to—

(A) inform those in need of the availability of such services; and

(B) coordinate the delivery of such services to the elderly, blind, and disabled.

The Commissioner shall establish procedures for administration demonstration projects under subsection (b)(6) not later than 6 months after the effective date of this subsection. The Commissioner shall report to the Congress with respect to the results and findings of the demonstration projects conducted under this section at the completion of the projects.

(42 U.S.C. 3035a) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1602-1603.

SPECIAL PROJECTS IN COMPREHENSIVE LONG-TERM CARE

SEC. 423. (a)(1) The Commissioner may—

(A) make grants to selected State agencies, designated under section 305(a)(1), and, in consultation with State agencies, selected area agencies on aging designated under section 305(a)(2)(A), institutions of higher education, and other public agencies and nonprofit private organizations; and

(B) enter into contracts with any agency, organization, or institution (except that such contract authority shall be effective for any fiscal year only to such extent, or in such amounts, as are provided in appropriations Acts);

to support the development of comprehensive, coordinated systems of community long-term care for older individuals, with special emphasis upon services designed to support alternatives to institutional living and the assessment of need, the development of a plan of care, and the referral of individuals, in the delivery of long-term care services, including noninstitutional and institutional services, where appropriate.

(2) A grant under this section may be made to pay part or all of the estimated cost of the program (including start-up cost) for a period of not more than 3 years, except that no funds may be used to pay for direct services which are eligible for reimbursement under title XVIII, title XIX, or title XX of the Social Security Act.

(3) A grant made under this section shall be used for the development of programs which provide a full continuum of services. Such services may include adult day health care; monitoring and evaluation of service effectiveness; supported living in public and private nonprofit housing; family respite services; preventive health services; home health, homemaker, and other rehabilitative and maintenance in-home services; services provided by geriatric health maintenance organizations; and other services which the Commissioner determines are appropriate, and which, at a minimum, provide for identification and assessment of the long-term care needs of older individuals, referral of such individuals to the appropriate services, and follow-up and evaluation of the continued appropriateness of such services with provision for re-referral as appropriate.

(b)(1) In making grants to States under this section, preference shall be given to applicants which demonstrate that—

(A) adequate State standards have been developed to ensure the quality of services provided;

(B) the State has made a commitment to carry out the program assisted under this section with the State agency responsible for the administration of title XIX of the Social Security Act or title XX of the Social Security Act, or both such agencies;

(C) the State will develop plans to finance the comprehensive program assisted under this section; and

(D) the State agency has a plan for statewide or designated regions of the State containing provisions designed to maximize access—by older individuals—to long-term care services.

(2) In awarding grants to or entering into contracts with agencies and organizations under this section, preference shall be given to applicants that possess the capability to establish community-based long-term care programs and demonstrate that a need exists for the establishment of such programs in the area to be served.

(3) Agencies and organizations assisted under this section shall establish procedures for evaluating the program assisted under this section, with respect to the benefits accruing to persons receiving assistance, the feasibility of the administrative model used for comprehensive coordination of services including coordination with other local programs, and the comparative costs and quality of services provided, and shall submit such evaluation to the Commissioner on a periodic basis.

(c) The Secretary shall involve appropriate Federal departments and agencies in carrying out the provisions of this section in order to assure coordination at the Federal level and to avoid duplication and shall include in the annual report to the Congress required by section 207, a report on the impact of grants made, or contracts entered into, on the experiences of grantees and contractors in meeting the requirements of this section, and on the comparative benefits and costs of projects assisted under this section.

(d) Sums appropriated to carry out this section shall, to the extent feasible, be used to support programs equitably distributed throughout the Nation between urban an rural areas.

(42 U.S.C. 3035b) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1603-1604.

SPECIAL DEMONSTRATION PROJECTS ON LEGAL SERVICES FOR OLDER AMERICANS

SEC. 424. (a) The Commissioner shall make grants to, and enter into contracts with, public and private nonprofit agencies or organizations in order to—

(1) provide support activities to State and area agencies on aging providing, developing, or supporting legal services to older individuals; and

(2) support demonstration projects to expand or improve the delivery of legal services to older individuals with social or economic need.

(b) Any grants or contracts entered into under subsection (a)(2) shall contain assurances that the requirements of section 307(a)(15) are met.

(42 U.S.C. 3035c) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1604-1605.

NATIONAL IMPACT ACTIVITIES

SEC. 425. (a) The Commissioner may carry out directly or through grants on contracts—

(1) innovation and development projects and activities of national significance which show promise of having substantial impact on the expansion or improvement of supportive services, nutrition services, or multipurpose senior centers, or otherwise promoting the well-being of older individuals; and

(2) dissemination of information activities related to such programs.

(b) An amount not to exceed 15 percent of any sums appropriated under section 431 may be used for carrying out this section.

(42 U.S.C. 3035d) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1605.

UTILITY AND HOME HEATING COST DEMONSTRATION PROJECTS

SEC. 426. The Secretary may, after consultation with the appropriate State agency designated under section 305(a)(1), make grants to pay for part or all of the costs of developing model projects which show promise of relieving older individuals of the excessive burdens of high utility service and home heating costs. Any such project shall give special consideration to projects under which a business concern is engaged in providing home heating oil or utility services to low-income older individuals at a cost which is substantially lower than providing home heating oil or utility services to other individuals.

(42 U.S.C. 3035e) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1606.

PART C—GENERAL PROVISIONS

AUTHORIZATION OF APPROPRIATIONS

SEC. 431. (a) There are authorized to be appropriated to carry out the provisions of this title $23,200,000 for fiscal year 1982, $24,800,000 for fiscal year 1983, and $26,600,000 for fiscal year 1984.

(b) No funds appropriated under this title—

(1) may be transferred to any office or other authority of the Federal Government which is not directly responsible to the Commissioner; or

(2) may be used for any program or activity which is not specially authorized by this title.

(42 U.S.C. 3037) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1605.

PAYMENTS OF GRANTS

SEC. 432. (a) To the extent he deems it appropriate, the Commissioner shall require the recipient of any grant or contract under this title to contribute money, facilities, or services for carrying out the project for which such grant or contract was made.

(b) Payments under this title pursuant to a grant or contract may be made (after necessary adjustment, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement, and in such installments and on such conditions, as the Commissioner may determine.

(c) The Commissioner shall make no grant or contract under this title in any State which has established or designated a State agency for purposes of title III unless the Commissioner has consulted with such State agency regarding such grant or contract.

(42 U.S.C. 3037a) As added December 29, 1981, P.L. 97-115, sec. 11(a), 95 Stat. 1605-1606.

TITLE V—COMMUNITY SERVICE EMPLOYMENT FOR OLDER AMERICANS [2]

SHORT TITLE

SEC. 501. This title may be cited as the "Older American Community Service Employment Act".

(42 U.S.C. 3001 note) As added November 28, 1975, P.L. 94-135, sec. 113(a), 89 Stat. 720; redesignated October 18, 1978, P.L. 95-478, sec. 105(a), 92 Stat. 1547.

OLDER AMERICAN COMMUNITY SERVICE EMPLOYMENT PROGRAM

SEC. 502. (a) In order to foster and promote useful part-time opportunities in community service activities for unemployed low-income persons who are fifty-five years old or older the Secretary of Labor (hereinafter in this title referred to as the "Secretary") is authorized to establish an older American community service employment program.

(b)(1) In order to carry out the provisions of this title, the Secretary is authorized to enter into agreements with public or private nonprofit agencies or organizations, including national organizations, agencies of a State government or a political subdivision of a State (having elected or duly appointed governing officials), or a combination of such political subdivisions, or tribal organizations in order to further the purposes and goals of the program. Such agreements may include provisions for the payment of costs, as provided in subsection (c), of projects developed by such organizations and agencies in cooperation with the Secretary in order to make the program effective or to supplement the program. No payment shall be made by the Secretary toward the cost of any project established or administered by any such organization or agency unless he determines that such project—

(A) will provide employment only for eligible individuals, except for necessary technical, administrative, and supervisory personnel, but such personnel shall, to the fullest extent possible, be recruited from among eligible individuals;

(B) will provide employment for eligible individuals in the community in which such individuals reside, or in nearby communities;

(C) will employ eligible individuals in services related to publicly owned and operated facilities and projects, or projects

[2] The Comprehensive Older Americans Act Amendments of 1978 (P.L. 95-478; 92 Stat. 1516) repealed title V (relating to multipurpose senior centers) and title VII (relating to nutrition program for the elderly), and redesignated title IX (relating to community service employment for older Americans) as title V. The provisions of titles V and VII were consolidated into title III, as revised by the Comprehensive Older Americans Act Amendments of 1978 (P.L. 95-478; 92 Stat. 1516). The Domestic Volunteer Service Act of 1973 (P.L. 93-113; 87 Stat. 394) repealed title VI (relating to national older Americans volunteer program). The Older Americans Comprehensive Services Amendments of 1973 (P.L. 93-29; 87 Stat. 30) repealed title VIII (relating to general provisions).

sponsored by organizations, other than political parties, exempt from taxation under the provisions of section 501(c)(3) of the Internal Revenue Code of 1954, except projects involving the construction, operation, or maintenance of any facility used or to be used as a place for sectarian religious instruction or worship;

(D) will contribute to the general welfare of the community;

(E) will provide employment for eligible individuals;

(F)(i) will result in an increase in employment opportunities over those opportunities which would otherwise be available; (ii) will not result in the displacement of currently employed workers (including partial displacement, such as a reduction in the hours of nonovertime work or wages or employment benefits), and (iii) will not impair existing contracts or result in the substitution of Federal funds for other funds in connection with work that would otherwise be performed;

(G) will not employ or continue to employ any eligible individual to perform work the same or substantially the same as that performed by any other person who is on layoff;

(H) will utilize methods of recruitment and selection (including listing of job vacancies with the employment agency operated by any State or political subdivision thereof) which will assure that the maximum number of eligible individuals will have an opportunity to participate in the project;

(I) will include such training as may be necessary to make the most effective use of the skills and talents of those individuals who are participating, and will provide for the payment of the reasonable expenses of individuals being trained, including a reasonable subsistence allowance;

(J) will assure that safe and healthy conditions of work will be provided, and will assure that persons employed in community service jobs assisted under this title shall be paid wages which shall not be lower than whichever is the highest of (i) the minimum wage which would be applicable to the employee under the Fair Labor Standards Act of 1938, if section 6(a)(1) of such Act applied to the participant and if he were not exempt under section 13 thereof, (ii) the State or local minimum wage for the most nearly comparable covered employment, or (iii) the prevailing rates of pay for persons employed in similar public occupations by the same employer;

(K) will be established or administered with the advice of persons competent in the field of service in which employment is being provided, and of persons who are knowledgeable with regard to the needs of older persons;

(L) will authorize pay for necessary transportation costs of eligible individuals which may be incurred in employment in any project funded under this title, in accordance with regulations promulgated by the Secretary;

(M) will assure that, to the extent feasible, such project will serve the needs of minority, Indian, and limited English-speaking eligible individuals in proportion to their numbers in the State; and

(N) will authorize funds to be used, to the extent feasible, to include individuals participating in such project under any State unemployment insurance plan.

(2) The Secretary is authorized to establish, issue, and amend such regulations as may be necessary to effectively carry out the provisions of this title.

(3) The Secretary shall develop alternatives for innovative work modes and provide technical assistance in creating job opportunities through work sharing and other experimental methods to prime sponsors, labor organizations, groups representing business and industry and workers as well as to individual employers, where appropriate.

(4) The Secretary may enter into an agreement with the Administrator of the Environmental Protection Agency to establish a Senior Environmental Employment Corps.

(c)(1) The Secretary is authorized to pay not to exceed 90 per centum of the cost of any project which is the subject of an agreement entered into under subsection (b), except that the Secretary is authorized to pay all of the costs of any such project which is (A) an emergency or disaster project, or (B) a project located in an economically depressed area, as determined by the Secretary in consultation with the Secretary of Commerce and the Director of the Office of Community Services of the Department of Health and Human Services.

(2) The non-Federal shall be in cash or in kind. In determining the amount of the non-Federal share, the Secretary is authorized to attribute fair market value to services and facilities contributed from non-Federal sources.

(d)(1) Whenever a national organization or other program sponsor conducts a project within a State such organization or program sponsor shall submit to the State agency on aging a description of such project to be conducted in the State, including the location of the project, 30 days prior to undertaking the project, for review and comment according to guidelines the Secretary shall issue to assure efficient and effective coordination of programs under this title.

(2) The Secretary shall review on his own initiative or at the request of any public or private nonprofit agency or organization, or an agency of the State government, the distribution of programs under this title within the State including the distribution between urban and rural areas within the State. For each proposed reallocation of programs within a State, the Secretary shall give notice and opportunity for a hearing on the record by all interested individuals and make a written determination of his findings and decision.

(e)(1) The Secretary, in addition to any other authority contained in this title, shall conduct experimental projects designed to assure second career training and placement of eligible individuals in employment opportunities with private business concerns. The Secretary shall enter into such agreements with States, public agencies, nonprofit private organizations and private business concerns as may be necessary to conduct the experimental projects authorized by this subsection. The Secretary, from amounts reserved under section 506(a)(1)(B) in any fiscal year, may pay all of the costs of any agreements entered into under the provisions of this subsec-

tion. The Secretary shall, to the extent feasible, assure equitable geographic distribution of projects authorized by this subsection.

(2) Not later than 90 days after the date of enactment of the Older Americans Act Amendments of 1981, the Secretary shall issue criteria designed to assure that agreements entered into under paragraph (1) of this subsection—

(A) will involve different kinds of work modes, such as flextime, job sharing, and other arrangements relating to reduced physical exertion; and

(B) will emphasize projects involving second careers and job placement and give consideration to placement in growth industries and in jobs reflecting new technological skills.

(3)(A) The Secretary shall carry out an evaluation of the second career training and job placement projects authorized by this subsection.

(B) The evaluation shall include but not be limited to the projects described in paragraph (2).

(C) The Secretary shall prepare and submit, not later than one year after the enactment of the Older Americans Act Amendments of 1981, to the Congress an interim report describing the agreements entered into under paragraph (1) and the design for the evaluation required by this paragraph. The Secretary shall prepare and submit to the President and the Congress a final report on the evaluation required by this paragraph not later than February 1, 1984, together with his findings and such recommendations, including recommendations for additional legislation, as the Secretary deems appropriate.

(D) The Secretary shall make the final report submitted under subparagraph (C) available to interested private business concerns.

(4) For the purpose of this subsection, "eligible individual" means any individual who is 55 years of age or older and who has an income equal to or less than the intermediate level retired couples budget as determined annually by the Bureau of Labor Statistics.

(42 U.S.C. 3056) As added November 28, 1975, P.L. 94-135, sec. 113(a), 89 Stat. 720; redesignated and amended October 18, 1978, P.L. 95-478, secs. 105(a), 105(b), 92 Stat. 1547; amended December 29, 1981, P.L. 97-115, secs. 12(a), 12(b)(1), 12(c), 95 Stat. 1606.

ADMINISTRATION

SEC. 503. (a) In order to effectively carry out the provisions of this title, the Secretary shall, through the Commissioner of the Administration on Aging, consult with the State agency on aging designated under section 305(a)(1) and the appropriate area agencies on aging established under section 305(a)(2) with regard to—

(1) the localities in which community service projects of the type authorized by this title are most needed;

(2) consideration of the employment situations and the type of skills possessed by available local individuals who are eligible to participate; and

(3) potential projects and the number and percentage of eligible individuals in the local population.

(b) If the Secretary determines that to do so would increase job opportunities available to individuals under this title, the Secretary is authorized to coordinate the program assisted under this title with programs authorized under the Emergency Jobs and Unem-

ployment Assistance Act of 1974, the Comprehensive Employment and Training Act, the Community Services Act of 1974, and the Emergency Employment Act of 1971. Appropriations under this Act may not be used to carry out any program under the Emergency Jobs and Unemployment Assistance Act of 1974, the Comprehensive Employment and Training Act, the Community Services Act of 1974, or the Emergency Employment Act of 1971.

(c) In carrying out the provisions of this title, the Secretary is authorized to use, with their consent, the services, equipment, personnel, and facilities of Federal and other agencies with or without reimbursement, and on a similar basis to cooperate with other public and private agencies and instrumentalities in the use of services, equipment, and facilities.

(d) Payments under this title may be made in advance or by way of reimbursement and in such installments as the Secretary may determine.

(e) The Secretary shall not delegate any function of the Secretary under this title to any other department or agency of the Federal Government.

(f) In carrying out the provisions of this title, the Secretary may fund and expand projects concerning the Senior Environmental Employment Corps and energy conservation from sums appropriated under section 508 for such fiscal year.

(42 U.S.C. 3056a) As added November 28, 1975, P.L. 94-135, sec. 113(a), 89 Stat. 722; redesignated and amended October 18, 1978, P.L. 95-478, secs. 105(a), 105(c), 92 Stat. 1547; amended December 29, 1981, P.L. 97-115, sec. 12(d), 95 Stat. 1607.

PARTICIPANTS NOT FEDERAL EMPLOYEES

SEC. 504. (a) Eligible individuals who are employed in any project funded under this title shall not be considered to be Federal employees as a result of such employment and shall not be subject to the provisions of part III of title 5, United States Code.

(b) No contract shall be entered into under this title with a contractor who is, or whose employees are, under State law, exempted from operation of the State workmen's compensation law, generally applicable to employees, unless the contractor shall undertake to provide either through insurance by a recognized carrier, or by self-insurance, as authorized by State law, that the persons employed under the contract shall enjoy workmen's compensation coverage equal to that provided by law for covered employment.

(42 U.S.C. 3056b) As added November 28, 1975, P.L. 94-135, sec. 113(a), 89 Stat. 723; redesignated and amended October 18, 1978, P.L. 95-478, secs. 105(a), 503(d), 92 Stat. 1547, 1559.

INTERAGENCY COOPERATION

SEC. 505. (a) The Secretary shall consult with, and obtain the written views of, the Commissioner of the Administration on Aging prior to the establishment of rules or the establishment of general policy in the administration of this title.

(b) The Secretary shall consult and cooperate with the Director of the Office of Community Services, the Secretary of Health and Human Services and the heads of other Federal agencies carrying out related programs, in order to achieve optimal coordination with such other programs. In carrying out the provisions of this section,

the Secretary shall promote programs or projects of a similar nature. Each Federal agency shall cooperate with the Secretary in disseminating information relating to the availability of assistance under this title and in promoting the identification and interests of individuals eligible for employment in projects assisted under this title.

(c) In administering projects under this title concerning the Senior Environmental Employment Corps and energy conservation, the Secretary shall consult with the Administrator of the Environmental Protection Agency and the Secretary of the Energy and shall enter into an agreement with the Administrator and the Secretary of Energy to coordinate programs conducted by them with such projects.

(42 U.S.C. 3056c) As added November 28, 1975, P.L. 94-135, sec. 113(a), 89 Stat. 723; redesignated and amended October 18, 1978, P.L. 95-478, secs. 105(a), 105(d), 92 Stat. 1547, 1548; amended December 29, 1981, P.L. 97-115, sec. 12(b)(2), 95 Stat. 1606.

EQUITABLE DISTRIBUTION OF ASSISTANCE

SEC. 506. (a)(1)(A). Subject to the provisions of paragraph (2), from sums appropriated under this title for each fiscal year, the Secretary shall first reserve such sums as may be necessary for national grants or contracts with public agencies and public or private nonprofit organizations to maintain the level of activities carried out under such grants or contracts at least at the level of such activities supported under this title and under any other provisions of Federal law relating to community service employment programs for older Americans in fiscal year 1978. Preference in awarding such grants or contracts shall be given to national organizations of proven ability in providing employment services to older persons under this program and similar programs. The Secretary, in awarding grants and contracts under this section shall, to the extent feasible, assure an equitable distribution of activities under such grants and contracts, in the aggregate, among the States, taking into account the needs of underserved States.

(B) From sums appropriated under this title for each fiscal year after September 30, 1978, the Secretary shall reserve an amount which is equal to at least 1 per centum but not more than 3 per centum of the amount appropriated in excess of the amount appropriated for fiscal year 1978 for the purpose of entering into agreements under section 502(e), relating to improved transition to private employment.

(2) For each fiscal year in which the sums appropriated under this title exceed the amount appropriated for fiscal year 1978, the Secretary shall reserve not more than 45 per centum of such excess amount for the purpose described in paragraph (1). The Secretary in awarding grants and contracts under such paragraph (1) from such 45 per centum shall, to the extent feasible, assure an equitable distribution of activities under such grants and contracts designed to achieve the allotment among the States described in paragraph (3) of this subsection. The remainder of such excess shall be allotted to the appropriate public agency of each State pursuant to paragraph (3).

(3) The Secretary shall allot to the State agency on aging of each State the remainder of the sums appropriated for any fiscal year

under section 508 so that each State will receive an amount which bears the same ratio to such remainder as the product of the number of persons aged fifty-five or over in the State and the allotment percentage of such State bears to the sum of the corresponding product for all States, except that (A) no State shall be allotted less than one-half of 1 per centum of the remainder of the sums appropriated for the fiscal year for which the determination is made, or $100,000, whichever is greater, and (B) Guam, American Samoa the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands shall each be allotted an amount which is not less than one-forth of 1 per centum of the remainder of the sums appropriated for the fiscal year for which the determination is made, or $50,000, whichever is greater. For the purpose of the exception contained in this paragraph the term "State" does not include Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Virgin Islands, and the Trust Territory of the Pacific Islands.

(4) For the purpose of this subsection—

(A) the allotment percentage of each State shall be 100 per centum less that percentage which bears the same ratio to 50 per centum as the per capita income of such State bears to the per capita income of the United States, except that (i) the allotment percentage shall in no case be more than 75 per centum or less than 33⅓ per centum, and (ii) the allotment percentage for the District of Columbia, Puerto Rico, Guam, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands shall be 75 per centum;

(B) the number of persons aged fifty-five or over in any State and in all States, and the per capita income in any State and in all States, shall be determined by the Secretary on the basis of the most satisfactory data available to him; and

(C) for the purpose of determining the allotment percentage, the term "United States" means the fifty States and the District of Columbia.

(b) The amount allotted for projects within any State under subsection (a) for any fiscal year which the Secretary determines will not be required for such year shall be reallotted, from time to time and on such dates during such year as the Secretary may fix, to projects within other States in proportion to the original allotments to projects within such States under subsection (a) for such year, but with such proportionate amount for any such other States being reduced to the extent it exceeds the sum the Secretary estimates that projects within such State need and will be able to use for such year; and the total of such reductions shall be similarly reallotted among the States whose proportionate amounts were not so reduced. Any amount reallotted to a State under this subsection during a year shall be deemed part of its allotment under subsection (a) for such year.

(c) The amount apportioned for projects within each State under subsection (a) shall be apportioned among areas within each such State in an equitable manner, taking into consideration (1) the proportion which eligible individuals in each such area bears to the total number of such individuals, respectively, in that State, and (2)

the relative distribution of such individuals residing in rural and urban areas within the State.

(42 U.S.C. 3056d) As added November 28, 1975, P.L. 94-135, sec. 113(a), 89 Stat. 723; redesignated and amended October 18, 1978, P.L. 95-478, secs. 105(a), 105(e), 92 Stat. 1547, 1548; amended December 29, 1981, P.L. 97-115, sec. 12(e), 95 Stat. 1607.

DEFINITIONS

SEC. 507. As used in this title—

(1) the term "State" means any of the several States of the United States, the District of Columbia, Puerto Rico, the Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the Trust Territory of the Pacific Islands;

(2) the term "eligible individual" means an individual who is fifty-five years old or over, who has a low income (including any such individual whose income in not more than 125 per centum of the poverty guidelines established by the Bureau of Labor Statistics), except that, pursuant to regulations prescribed by the Secretary, any such individual who is sixty years old or over shall have priority for the work opportunities provided for under this title;

(3) The term "community service" means social, health, welfare, and educational services, legal and other counseling services and assistance, including tax counseling and assistance and financial counseling, and library, recreational, and other similar services; conservation, maintance, or restoration of natural resources; community betterment or beautification; antipollution and environmental quality efforts; weatherization activities; economic development; and such other services essential and necessary to the community as the Secretary, by regulation, may prescribe; and

(4) the term "program" means the older American community service employment program established under this title.

(42 U.S.C. 3056e) As added November 28, 1975, P.L. 94-135, sec. 113(a), 89 Stat. 724; redesignated and amended October 18, 1978, P.L. 95-478, secs. 105(a), 105(f), 92 Stat. 1547, 1548; amended December 29, 1981, P.L. 97-115, sec. 12(f), 95 Stat. 1607.

AUTHORIZATION OF APPROPRIATIONS

SEC. 508. (a) There is authorized to be appropriated to carry out this title–

(1) $277,100,000 for fiscal year 1982, $296,500,000 for fiscal year 1983, and $317,300,000 for fiscal year 1984; and

(2) such additional sums as may be necessary for each such fiscal year to enable the Secretary, through programs under this title, to provide for at least 54,200 part-time employment positions for eligible individuals.

For purpose of paragraph (2), "part-time employment position" means an employment position within a work-week of at least 20 hours.

(b) Amounts appropriated under this section for any fiscal year shall be used during the annual period which begins on July 1 of the calendar year immediately following the beginning of such fiscal year and which ends on June 30 of the following calendar year. The Secretary may extend the period during which such

amounts may be obligated or expended in the case of a particular organization or agency receiving funds under this title if the Secretary determines that such extension is necessary to ensure the effective use of such funds by such organization or agency. Any such extension shall be for a period of not more than 60 days after the end of such annual period.

(42 U.S.C. 3056f) As added November 28, 1975, P.L. 94-135, sec. 113(a), 89 Stat. 725; redesignated and amended October 18, 1978, P.L. 95-478, secs. 105(a), 105(g), 92 Stat. 1547, 1548; amended December 29, 1981, P.L. 97-115, sec. 12(g), 95 Stat. 1607-1608.

TITLE VI—GRANTS FOR INDIAN TRIBES

STATEMENT OF PURPOSE

SEC. 601. It is the purpose of this title to promote the delivery of supportive services, including nutritional services, for Indians that are comparable to services provided under title III.

(42 U.S.C. 3057) As added October 18, 1978, P.L. 97-478, sec. 106, 92 Stat. 1549.

ELIGIBILITY

SEC. 602. (a) A tribal organization of an Indian tribe is eligible for assistance under this title only if—

(1) the tribal organization represents at least 75 individuals who have attained 60 years of age or older;

(2) the tribal organization demonstrates the ability to deliver supportive services, including nutritional services; and

(3) individuals to be served by the tribal organization will not receive for the year for which application under this title is made, services under title III.

(b) The terms "Indian tribe" and "tribal organization" for the purposes of this title are defined as in section 4 of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b).

(42 U.S.C. 3057a) As added October 18, 1978, P.L. 95-478, sec. 106, 92 Stat. 1549.

GRANTS AUTHORIZED

SEC. 603. The Commissioner may make grants to eligible tribal organizations to pay all of the costs for delivery of supportive services and nutritional services for older Indians.

(42 U.S.C. 3057b) As added October 18, 1978, P.L. 95-478, sec. 106, 92 Stat. 1549; amended December 29, 1981, P.L. 97-115, sec. 13(a), 95 Stat. 1608.

APPLICATIONS

SEC. 604. (a) No grant may be made under this title unless the eligible tribal organization submits an application to the Commissioner which meets such criteria as the Commissioner may by regulation prescribe. Each such application shall—

(1) provide that the eligible tribal organization will evaluate the need for supportive and nutritional services among older Indians to be represented by the tribal organization;

(2) provide for the use of such methods of administration as are necessary for the proper and efficient administration of the program to be assisted;

(3) provide that the tribal organization will make such reports in such form and containing such information, as the

Commissioner may reasonably require, and comply with such requirements as the Commissioner may impose to assure the correctness of such reports;

(4) provide for periodic evaluation of activities and projects carried out under the application;

(5) establish objectives consistent with the purposes of this title toward which activities under the application will be directed, identify obstacles to the attainment of such objectives, and indicate the manner in which the tribal organization proposes to overcome such obstacles;

(6) provide for establishing and maintaining information and referral services to assure that older Indians to be served by the assistance made available under this title will have reasonably convenient access to such services;

(7) provide a preference for Indians aged 60 and older for full- or part-time staff positions wherever feasible;

(8) provide assurances that either directly or by way of grant or contract with appropriate entities nutritional services will be delivered to older Indians represented by the tribal organization substantially in compliance with the provisions of part C of title III except that in any case in which the need for nutritional services for older Indians represented by the tribal organization is already met from other sources, the tribal organization may use the funds otherwise required to be expended under this paragraph for supportive services;

(9) contain assurances that the provisions of sections 307(a)(14)(A) (i) and (iii), 307(a)(14)(B), and 307(a)(14)(C) will be complied with whenever the application contains provisions for the acquisition, alteration, or renovation of facilities to serve as multipurpose senior centers;

(10) provide that any legal or ombudsman services made available to older Indians represented by the tribal organization will be substantially in compliance with the provisions of title III relating to the furnishing of similar services; and

(11) provide satisfactory assurance that fiscal control and fund accounting procedures will be adopted as may be necessary to assure proper disbursement of, and accounting for, Federal funds paid under this title to the tribal organization, including any funds paid by the tribal organization to a recipient of a grant or contract.

(b) For the purpose of any application submitted under this title, the tribal organization may develop its own population statistics, with certification from the Bureau of Indian Affairs, in order to establish eligibility.

(c) The Commissioner shall approve any application which complies with the provisions of subsection (a).

(d) Whenever the Commissioner determines not to approve an application submitted under subsection (a) he shall—

(1) state his objections in writing to the tribal organization within 60 days after such decision;

(2) provide to the extent practicable technical assistance to the tribal organization to overcome his stated objections; and

(3) provide the tribal organization with a hearing, under such rules and regulations as he may prescribe.

(e) Whenever the Commissioner approves an application of a tribal organization under this title, funds shall be awarded for not less than 12 months, during which time such tribal organization may not receive funds under title III.

(42 U.S.C. 3057c) As added October 18, 1978, P.L. 95-478, sec. 106, 92 Stat. 1549; amended December 29, 1981, P.L. 97-115, sec. 13(b), 95 Stat. 1608.

ADMINISTRATION

SEC. 605. In establishing regulations for the purpose of this title the Commissioner shall consult with the Secretary of the Interior.

(42 U.S.C. 3057d) As added October 18, 1978, P.L. 95-478, sec. 106, 92 Stat. 1551; amended December 29, 1981, P.L. 97-115, sec. 13(c), 95 Stat. 1608.

SURPLUS EDUCATIONAL FACILITIES

SEC. 606. (a) Notwithstanding any other provision of law, the Secretary of the Interior through the Bureau of Indian Affairs shall make available surplus Indian educational facilities to tribal organizations, and nonprofit organizations with tribal approval, for use as multipurpose senior centers. Such centers may be altered so as to provide extended care facilities, community center facilities, nutritional services, child care services, and other social supportive services.

(b) Each eligible tribal organization desiring to take advantage of such surplus facilities shall submit an application to the Secretary of the Interior at such time and in such manner; and containing or accompanied by such information, as the Secretary of the Interior determines to be necessary to carry out the provisions of this section.

(42 U.S.C. 3057e) As added October 18, 1978, P.L. 95-478, sec. 106, 92 Stat. 1551; amended December 29, 1981, P.L. 97-115, sec. 13(d), 95 Stat. 1597.
(42 U.S.C. 3057f) As added October 18, 1978, P.L. 95-478, sec. 106, 92 Stat. 1551.
(42 U.S.C. 3057g) As added October 18, 1978, P.L. 95-478, sec. 106, 92 Stat. 1551; amended December 29, 1981, P.L. 97-115, sec. 13(d), 95 Stat. 1608.

PAYMENTS

SEC. 607. Payments may be made under this title (after necessary adjustments, in the case of grants, on account of previously made overpayments or underpayments) in advance or by way of reimbursement in such installments and on such conditions as the Commissioner may determine.

AUTHORIZATION OF APPROPRIATIONS

SEC. 608. (a) There are authorized to be appropriated $6,500,000 for fiscal year 1982, $7,000,000 for fiscal year 1983, and $7,500,000 for fiscal year 1984 to carry out the provisions of this title other than section 606.

(b) For any fiscal year in which less then $5,000,000 is appropriated under subsection (a) tribal organizations are authorized to receive assistance in accordance with the provisions of title III.

(c) There are authorized to be appropriated such sums as may be necessary for fiscal years 1979, 1980 and 1981, to carry out the provisions of section 606.

SUPPLEMENTAL INFORMATION

OLDER AMERICANS ACT—NATIONAL SUMMARY OF PROGRAM PERFORMANCE, FISCAL YEAR 1981

(Prepared by Administration of Aging Office of Program Operations Division of Operations Analysis)

STATE AGENCY STAFFING AND POOLING OF RESOURCES

	Number	Percent
60+ staff	113	8
Female staff	691	52
Racial/ethnic composition:		
American Indian/Alaskan Native	8	6
Asian/Pacific Islander	80	6
Black, not Hispanic	121	9
Hispanic	65	5
White, not Hispanic	1,064	80
Total professional paid staff	1,338	
60+ staff	46	9
Female staff	441	90
Racial/ethnic composition:		
American Indian/Alaskan Native	7	2
Asian/Pacific Islander	19	4
Black, not Hispanic	60	12
Hispanic	36	7
White, not Hispanic	369	75
Total clerical staff	491	
Total State agency paid staff	1,829	
Local resources	$171,425,377	27
State resources	165,192,937	26
Federal resources	304,374,764	47
Total statewide pooling of resources	640,993,078	

AREA AGENCIES ON AGING OPERATION

	Number	Percent
Total planning and service areas	677	
Total rural planning and service areas	326	48
Area agencies funded and employment: Total area agencies funded	[1] 674	
Paid staff:		
(1) 60+ staff	3,106	27
(2) Female staff	8,445	74
(3) Racial/ethnic composition: American Indian/Alaskan Native	74	1

AREA AGENCIES ON AGING OPERATION—Continued

	Number	Percent
Asian/Pacific Islander	167	2
Black, not Hispanic	1,385	12
Hispanic	819	7
White, not Hispanic	8,891	78
Total	11,336	
Volunteers:		
(1) 60+	39,649	78
(2) Minority	6,759	13
Total volunteers	50,885	

[1]13 States are single PSA's: New Hampshire, Rhode Island, Virgin Islands, Delaware, District of Columbia, North Dakota, South Dakota, American Samoa, Guam, Nevada, Trust Territory of the Pacific Islands, Commonwealth of the Northern Mariana Islands, and Alabama

COMMUNITY FOCAL POINTS/MULTIPURPOSE SENIOR CENTERS/SERVICE PROVISION MODE

	Number	Percent
Community focal points:		
Multipurpose senior centers	3,086	50
Congregate meal sites	2,108	34
Mobile units	56	.9
Others	887	15
Total community focal points designated	6,137	
Multipurpose senior centers funded:		
Altered/renovated	1,547	74
Acquired	311	15
Constructed	233	11
Total multipurpose senior centers funded	2,091	
Service provision: Types of service providers:		
Nonprofit agency	6,435	81
Profitmaking agency	313	4
Other	1,178	15
Total number of service providers	7,926	

SOCIAL SERVICES PARTICIPATION

	Number	Percent
ESTIMATED PERSONS SERVED		
Service provided:		
Access:		
Transportation	4,072,998	
Outreach	2,290,093	
Information and referral	4,683,539	
Other	401,921	
Inhome:		
Homemaker	293,054	
Home health aid	126,787	
Visiting/telephone reassurance	726,638	
Chore maintenance	167,483	
Other	193,603	
Community services:		
Legal	454,800	
Escort	313,907	

SOCIAL SERVICES PARTICIPATION—Continued

	Number	Percent
Residential repair/renovation	59,776	
Health	820,745	
Other	3,388,913	
Services in care providing facilities	203,136	
UNDUPLICATED PERSONS SERVED		
Total persons served	8,885,747	
Greatest social needy	3,745,239	42
Greatest economic needy	4,536,277	51
Total minority served	1,607,229	18
American Indian/Alaskan Native	39,428	4
Asian/Pacific islander	150,109	2
Black, not Hispanic	1,052,762	12
Hispanic	350,390	4
White, not Hispanic	7,278,518	82
Other	14,540	2

CONGREGATE NUTRITION OPERATIONS—STAFF, SITES, TYPE, AND MEAL FREQUENCY

	Number	Percent
Staffing:		
Total paid staff	27,313	
60+ staff	10,818	40
Minority staff	8,161	30
Female staff	21,666	79
Total volunteers	195,976	
60+ volunteers	174,090	89
Minority volunteers	33,592	17
Congregate sites: Total sites	12,915	
Type:		
Multipurpose senior center	4,647	36
Religious facility	2,367	18
School	464	04
Public/low rent housing	1,629	13
Restaurant	280	02
Other	3,528	27
Frequency:		
7 days per week	91	7
6 days per week	120	9
5 days per week	10,358	80
4 days per week	346	3
3 days per week	833	6
Less than 3 days per week	1,167	9
Total sites serving more than one meal per day	284	2

CONGREGATE NUTRITION OPERATIONS—MEALS AND PARTICIPATION

	Number	Percent
Meals served:		
Total meals served from all funding sources	142,594,082	
Catered	69,754,054	49
Site prepared meals	41,811,100	29
Central kitchen prepared meals	31,028,928	22

CONGREGATE NUTRITION OPERATIONS—MEALS AND PARTICIPATION—Continued

	Number	Percent
Total meals served elderly and spouses	138,579,878	97
Total meals served from title III C–1 expenditures only	120,347,453	84
Participation:		
Total persons served from all funding sources	2,832,870	
Greatest social needy	1,292,737	46
Greatest economic needy	1,701,011	50
Total minority served	535,040	19
American Indian/Native Alaskan	31,665	1
Asian/Pacific islander	40,365	1
Black, not hispanic	319,122	1
Hispanic	134,610	5
White, not Hispanic	2,297,830	82
Other	9,278	.3
Average cost per congregate meal served	$2.54	

HOME DELIVERED MEALS OPERATIONS—STAFF, SITES, AND MEAL FREQUENCY

	Number	Percent
Staffing:		
Total paid staff	11,279	
60 + staff	3,625	32
Minority staff	2,535	22
Female staff	8,925	79
Total volunteers	93,422	
60 + volunteers	64,021	69
Minority volunteers	11,485	12
Home delivered service:		
Total home delivered meal providers	3,373	
Total voluntary home delivered meal providers	607	19
Meal frequency:		
7 days per week	142	04
6 days per week	260	08
5 days per week	2,565	76
4 days per week	77	02
3 days per week	165	05
Less than 3-days per week	164	05
Total home delivered meal providers delivering more than 1 meal per day	285	08

HOME DELIVERED MEALS OPERATIONS—MEALS AND PARTICIPATION

	Number	Percent
Meals served:		
Total home delivered meals served from all funding sources	[1] 45,283,802	
Hot meals	39,295,897	87
Cold meals	4,690,585	10
Total meals served from Title III C–1 expenditures only	34,971,652	77
Participation:		
Total persons served from all funding sources	568,082	
Greatest social needy	361,062	64
Greatest economic needy	372,318	66
Total minority served	109,163	19
American Indian/Native Alaskan	8,212	1
Asian/Pacific islander	7,780	1
Black, not hispanic	59,660	11
Hispanic	31,666	6
White	458,919	81
Other	1,845	.3

HOME DELIVERED MEALS OPERATIONS—MEALS AND PARTICIPATION—Continued

	Number	Percent
Average cost per home delivered meal served	$2.07	

[1] New York provided a total of 1,297,320 meals and not a distribution for hot and cold meals.

TITLE III—OLDER AMERICANS ACT SUMMARY PROGRAM RESULTS

	Fiscal year 1981	Fiscal year 1980
State agency operations:		
Allotment amount	$22,675,000	$22,500,000
Total paid staff	1,338	1,815
Planning and service areas	680	683
Area agencies on aging	667	670
Single PSA States	13	13
Resources pooled (in millions)	$641,000,000	$665,000,000
Area agency operations:		
Total paid staff	11,336	9,356
Total social service provides	7,926	[1]
Total volunteers/social services	50,885	37,222
Allotment amount/social services and senior centers	$251,206,591	$245,306,162
Number of persons provided social services	8,885,747	9,336,993
Minority	1,607,229	2,047,007
Low income	4,536,227	5,051,886
Allotment amount/congregate meals	$294,100,989	$267,300,000
Allotment amount/home delivered meals	$54,755,751	49,500,000
Nutrition sites	12,915	12,556
Home delivered meals providers	3,373	[1]
Total paid staff/nutrition services	38,592	32,343
Total volunteers nutrition services	289,398	220,694
Total meals served	187,877,884	168,390,299
Congregate meals	142,594,082	131,993,378
Home delivered meals	45,283,802	36,396,921
Meals provided with title III funds only	155,319,038	145,175,799
Average meal cost per meal	$2.54	$2.27
USDA reimbursement rate/meal (in cents)	47.25	43
USDA entitlement	$86,875,589	$70,702,176
Persons provided nutrition services	3,400,952	3,083,454
Minority	644,203	585,584
Low income	2,073,329	1,925,886

[1] Not available.

POPULATION BY AGE: 1980

Regions and divisions by States	All ages	Under 5 years	5 to 9 years	10 to 14 years	15 to 19 years	20 to 24 years	25 to 29 years	30 to 34 years
United States	226,504,825	16,344,407	16,697,134	18,240,919	21,161,667	21,312,557	19,517,672	17,557,957
Northeast	49,136,667	3,102,809	3,330,486	3,949,766	4,522,693	4,340,917	3,978,981	3,728,728
New England	12,348,493	756,119	831,988	1,005,475	1,172,870	1,146,214	1,031,205	964,898
Middle Atlantic	36,788,174	2,346,690	2,498,498	2,944,291	3,349,823	3,194,703	2,947,776	2,763,830
North Central	58,853,804	4,379,100	4,427,251	4,803,327	5,605,851	5,567,683	5,021,860	4,403,698
East North Central	41,669,738	3,079,307	3,175,422	3,454,231	3,969,510	3,939,070	3,563,911	3,152,380
West North Central	17,184,066	1,299,793,	1,251,829	1,349,096	1,636,341	1,628,613	1,457,949	1,251,318
South	75,349,155	5,540,380	5,778,361	6,132,719	7,117,768	7,123,852	6,428,676	5,783,309
South Atlantic	36,943,139	2,481,063	2,680,593	2,938,683	3,426,320	3,442,271	3,121,758	2,874,744
East South Central	14,662,882	1,120,317	1,172,022	1,226,334	1,419,837	1,363,168	1,209,621	1,088,381
West South Central	23,743,134	1,939,000	1,925,746	1,967,702	2,271,611	2,318,413	2,097,297	1,820,184
West	43,165,199	3,322,118	3,161,036	3,355,107	3,915,355	4,280,105	4,088,155	3,642,222
Mountain	11,368,330	993,572	917,467	925,685	1,066,847	1,135,550	1,068,004	924,121
Pacific	31,796,869	2,328,546	2,243,569	2,429,422	2,848,508	3,144,555	3,020,151	2,718,101
New England:								
Maine	1,124,660	78,514	84,179	94,277	107,412	98,438	92,242	86,557
New Hampshire	920,610	62,512	67,997	76,763	87,776	83,624	79,468	77,928
Vermont	511,456	35,998	37,855	42,650	51,287	48,637	44,845	42,325
Massachusetts	5,737,037	337,215	374,734	461,332	548,239	552,902	489,175	446,395
Rhode Island	947,154	56,692	61,465	74,170	89,773	90,231	76,215	69,820
Connecticut	3,107,576	185,188	205,758	256,283	288,383	272,382	249,260	241,873
Middle Atlantic:								
New York	17,557,288	1,135,687	1,184,687	1,406,378	1,598,252	1,519,964	1,428,314	1,351,997
New Jersey	7,364,158	463,127	508,526	605,695	670,705	614,774	574,046	563,735
Pennsylvania	11,866,728	747,876	805,285	932,218	1,080,866	1,059,965	945,416	848,098
East North Central:								
Ohio	10,797,419	787,144	821,475	886,800	1,007,529	1,004,947	907,446	815,808
Indiana	5,490,179	418,634	433,048	454,754	529,765	518,707	462,807	411,529

POPULATION BY AGE: 1980—Continued

Regions and divisions by States	All ages	Under 5 years	5 to 9 years	10 to 14 years	15 to 19 years	20 to 24 years	25 to 29 years	30 to 34 years
Illinois	11,418,461	841,624	849,290	918,397	1,065,988	1,072,377	985,168	868,795
Michigan	9,258,344	684,937	726,803	801,982	899,697	893,194	806,691	708,142
Wisconsin	4,705,335	346,968	344,806	392,298	466,531	449,845	401,799	348,106
West North Central:								
Minnesota	4,077,148	307,230	296,316	333,517	400,027	393,623	363,516	313,178
Iowa	2,913,387	221,585	211,089	231,669	277,542	271,999	243,229	205,895
Missouri	4,917,444	354,114	355,486	382,186	461,276	445,661	398,461	354,312
North Dakota	652,695	54,680	49,104	51,052	63,938	69,373	58,496	45,690
South Dakota	690,178	58,410	52,820	54,352	68,569	66,403	56,798	45,892
Nebraska	1,570,006	122,927	113,039	120,983	147,308	148,823	134,788	114,446
Kansas	2,363,208	180,847	168,975	175,337	217,681	232,731	202,661	171,905
South Atlantic:								
Delaware	595,225	41,249	42,081	48,977	59,773	58,293	49,744	45,506
Maryland	4,216,446	272,278	292,796	356,638	404,918	392,259	370,962	354,438
District of Columbia	637,651	34,345	36,516	42,135	57,527	69,448	66,278	56,158
Virginia	5,346,279	360,647	387,476	430,947	505,901	530,636	477,961	449,881
West Virginia	1,949,644	145,583	152,802	157,489	174,204	172,688	160,954	144,649
North Carolina	5,874,429	403,486	447,160	481,768	565,656	578,752	502,007	460,574
South Carolina	3,119,208	238,487	253,462	266,068	316,720	312,715	272,861	243,601
Georgia	5,464,265	414,983	446,979	469,718	530,690	516,336	481,440	448,752
Florida	9,739,992	570,005	621,321	684,943	810,931	811,144	739,551	671,185
East South Central:								
Kentucky	3,661,433	282,845	289,408	301,799	354,427	346,161	309,491	276,413
Tennessee	4,590,750	326,058	349,831	370,166	430,127	423,306	387,938	356,547
Alabama	3,890,061	296,135	313,735	328,093	376,405	360,196	315,063	283,011
Mississippi	2,520,638	215,279	219,048	226,276	258,878	233,505	197,129	172,410
West South Central:								
Arkansas	2,285,513	175,427	180,385	185,477	214,287	193,597	174,177	161,003
Louisiana	4,203,972	361,289	345,816	371,698	426,069	420,129	368,547	311,945
Oklahoma	3,025,266	233,240	229,596	230,728	278,973	284,386	252,700	222,741
Texas	14,228,383	1,169,044	1,169,949	1,179,799	1,352,282	1,420,301	1,301,873	1,124,495
Mountain:								
Montana	786,690	64,455	60,238	62,539	74,622	74,018	71,516	61,409
Idaho	943,935	93,531	82,734	79,218	87,982	86,234	82,461	72,941
Wyoming	470,816	44,883	39,328	37,220	42,786	50,748	49,515	39,415

Regions and divisions by States	All ages	Under 5 years	5 to 9 years	10 to 14 years	15 to 19 years	20 to 24 years	25 to 29 years	30 to 34 years
Colorado	2,888,834	216,399	213,008	226,024	268,522	302,482	302,472	266,781
New Mexico	1,299,968	114,328	109,254	113,718	131,929	125,362	115,066	101,070
Arizona	2,717,866	214,106	211,228	219,635	251,988	263,770	236,230	207,789
Utah	1,461,037	189,962	146,187	125,681	138,903	155,676	135,087	105,688
Nevada	799,184	55,908	55,490	61,650	70,115	77,260	75,655	69,028
Pacific:								
Washington	4,130,163	305,859	295,976	321,836	368,885	400,286	389,771	354,473
Oregon	2,632,663	197,951	189,293	202,546	225,814	237,788	253,472	227,565
California	23,668,562	1,708,063	1,650,307	1,795,875	2,130,324	2,355,662	2,233,145	2,009,953
Alaska	400,481	38,777	34,917	34,166	36,980	45,058	48,542	41,916
Hawaii	965,000	77,896	73,076	74,999	86,505	105,761	95,221	84,194

Regions and divisions by States	35 to 39 years	40 to 44 years	45 to 49 years	50 to 54 years	55 to 59 years	60 to 64 years	65 years and over	Median age
United States	13,963,008	11,668,239	11,088,383	11,708,984	11,614,054	10,085,711	25,544,133	30.0
Northeast	3,035,891	2,544,003	2,512,957	2,789,299	2,791,763	2,436,659	6,071,715	31.8
New England	766,840	615,772	607,255	664,201	670,272	595,016	1,520,368	31.2
Middle Atlantic	2,269,051	1,928,231	1,905,702	2,125,098	2,121,491	1,841,643	4,551,347	32.0
North Central	3,500,923	2,971,795	2,841,474	3,044,076	3,001,539	2,593,907	6,691,320	29.6
East North Central	2,508,528	2,128,217	2,029,536	2,191,397	2,153,239	1,832,419	4,492,571	29.5
West North Central	992,395	843,578	811,938	852,679	848,300	761,488	2,198,749	29.9
South	4,629,031	3,895,366	3,670,759	3,774,593	3,716,460	3,274,365	8,483,516	29.7
South Atlantic	2,316,347	1,941,697	1,829,379	1,904,142	1,908,726	1,713,924	4,363,492	30.7
East South Central	872,494	756,086	711,212	728,976	711,423	626,339	1,656,672	29.3
West South Central	1,440,190	1,197,583	1,130,168	1,141,475	1,096,311	934,102	2,463,352	28.5
West	2,797,163	2,257,075	2,063,193	2,101,016	2,104,292	1,780,780	4,297,582	29.3
Mountain	705,671	577,707	522,575	517,196	507,916	445,653	1,060,366	28.0

Regions and divisions by States	35 to 39 years	40 to 44 years	45 to 49 years	50 to 54 years	55 to 59 years	60 to 64 years	65 years and over	Median age
Pacific	2,091,492	1,679,368	1,540,618	1,583,820	1,596,376	1,335,127	3,237,216	29.8
New England:								
Maine	66,954	55,771	54,724	57,297	56,566	50,811	140,918	30.4
New Hampshire	60,091	46,937	44,295	45,826	44,749	39,677	102,967	30.1
Vermont	32,371	25,023	23,618	24,156	23,502	21,023	58,166	29.4
Massachusetts	348,552	278,748	278,261	306,574	310,995	277,384	726,531	31.2
Rhode Island	54,393	44,470	44,708	53,096	55,748	49,451	126,922	31.8
Connecticut	204,479	164,823	161,649	177,252	178,712	156,670	364,864	32.0
Middle Atlantic:								
New York	1,106,790	936,291	911,387	996,676	979,223	841,084	2,160,558	31.9
New Jersey	479,715	400,048	393,967	432,607	430,087	367,444	859,682	32.2
Pennsylvania	682,546	591,892	600,348	695,815	712,181	633,115	1,531,107	32.1
East North Central:								
Ohio	640,583	559,227	538,710	587,794	582,002	488,517	1,169,437	29.9
Indiana	331,957	281,602	266,795	283,287	278,088	233,781	585,425	29.2
Illinois	700,054	592,523	558,613	601,826	592,827	509,819	1,261,160	29.9
Michigan	564,370	464,578	445,555	485,442	471,324	393,308	912,321	28.9
Wisconsin	271,564	230,287	219,863	233,048	228,998	206,994	564,228	29.4
West North Central:								
Minnesota	246,329	202,932	187,120	193,365	189,533	170,716	479,746	29.2
Iowa	161,199	141,417	135,577	145,837	145,823	133,028	387,498	30.0
Missouri	291,752	248,870	242,946	253,699	255,133	225,259	648,289	30.9
North Dakota	34,225	29,393	28,634	30,507	29,213	27,943	80,447	28.3
South Dakota	35,256	31,195	31,360	33,539	33,546	31,024	91,014	28.9
Nebraska	88,446	75,361	73,814	76,834	75,143	67,518	205,576	29.7
Kansas	135,188	114,410	112,487	118,898	119,909	106,000	306,179	30.1
South Atlantic:								
Delaware	37,149	31,196	30,978	32,277	31,866	26,852	59,284	29.7
Maryland	291,191	235,853	218,912	227,564	222,669	180,374	395,594	30.3
District of Columbia	41,455	32,786	30,173	33,107	34,068	29,453	74,202	31.1
Virginia	366,069	296,835	271,557	274,287	267,742	221,136	505,204	29.8
West Virginia	109,878	97,541	93,307	104,805	105,219	92,657	237,868	30.4
North Carolina	368,132	313,756	296,550	304,045	295,445	254,825	602,273	29.6
South Carolina	192,001	158,325	149,998	149,142	149,866	128,675	287,287	28.2
Georgia	356,527	291,053	266,874	251,280	246,924	215,901	516,808	28.7
Florida	553,945	484,352	471,030	517,635	554,927	564,051	1,684,972	34.7

Regions and divisions by States	35 to 39 years	40 to 44 years	45 to 49 years	50 to 54 years	55 to 59 years	60 to 64 years	65 years and over	Median age
East South Central:								
Kentucky	218,010	186,616	174,418	179,812	178,324	153,856	409,853	29.1
Tennessee	287,669	246,229	231,233	234,056	230,272	199,794	517,524	30.1
Alabama	228,726	200,825	191,899	196,951	190,059	169,025	439,938	29.3
Mississippi	138,089	122,416	113,662	118,157	112,768	103,664	289,357	27.7
West South Central:								
Arkansas	133,598	113,777	107,256	110,391	113,529	110,278	312,331	30.6
Louisiana	244,121	205,904	193,009	200,651	189,173	161,682	403,939	27.4
Oklahoma	182,326	154,925	148,571	150,138	150,282	130,618	376,042	30.1
Texas	880,145	722,977	681,332	680,295	643,327	531,524	1,371,040	28.2
Mountain:								
Montana	48,045	40,374	36,314	37,363	36,557	34,681	84,559	29.0
Idaho	57,644	46,682	40,973	40,476	41,182	38,197	93,680	27.6
Wyoming	29,424	23,783	20,795	21,151	18,935	15,615	37,218	27.1
Colorado	193,477	153,403	137,874	132,954	125,651	102,524	247,261	28.6
New Mexico	77,980	66,466	61,725	60,179	58,443	48,758	115,690	27.4
Arizona	162,897	135,172	125,040	126,657	132,339	124,044	306,971	29.2
Utah	79,178	63,628	57,021	55,845	52,701	46,260	109,220	24.2
Nevada	57,026	48,199	42,833	42,571	42,108	35,574	65,767	30.3
Pacific:								
Washington	273,286	213,754	193,387	198,433	203,943	178,857	431,417	29.8
Oregon	170,694	133,101	119,249	124,344	129,886	117,676	303,284	30.2
California	1,552,418	1,262,473	1,164,356	1,195,998	1,202,544	992,689	2,414,755	29.9
Alaska	31,182	22,570	18,355	15,801	12,592	8,095	11,530	26.1
Hawaii	63,912	47,470	45,271	49,244	47,411	37,810	76,230	28.4

Source: U.S. Bureau of Census, Washington, D.C., 1981.

98th Congress, 1st Session - - - - - - - - - House Document No. 98-46

GIVE YOURSELF CREDIT
(GUIDE TO CONSUMER CREDIT LAWS)

SUBCOMMITTEE ON CONSUMER AFFAIRS AND COINAGE

OF THE

COMMITTEE ON
BANKING, FINANCE AND URBAN AFFAIRS
HOUSE OF REPRESENTATIVES

98th Congress, First Session

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OF THE
COMMITTEE ON BANKING, FINANCE AND URBAN AFFAIRS
ROOM 212 HOUSE OFFICE BUILDING ANNEX NO. 1
WASHINGTON, D.C. 20515
April 15, 1983

Honorable Fernand J. St Germain
Chairman
Committee on Banking, Finance and Urban Affairs
2129 Rayburn House Office Building
Washington, D.C. 20515

Dear Mr. Chairman:

In 1977, the 95th Congress authorized the publication of Give Yourself Credit, a consumers' guidebook to Federal credit laws. The public response was overwhelmingly enthusiastic. Since that time, many changes have occurred in these laws and new financial protection laws have been enacted. Therefore, I directed the Subcommittee on Consumer Affairs and Coinage, which I chair, to undertake the task of updating and revising the original publication. This second edition of Give Yourself Credit reflects those changes which have occurred in Federal laws dealing with credit transactions.

The purpose of this publication, however, remains the same. It is still to provide consumers with the most complete information available in order that they may make informed decisions in financial and credit transactions. It does so by explaining Federal consumer credit protection laws in an easy-to-follow question and answer format. These laws include the Truth in Lending Act, Fair Credit Reporting Act, Fair Credit Billing Act, Consumer Leasing Act, Equal Credit Opportunity Act, Electronic Fund Transfer Act, and the Fair Debt Collection Practices Act.

In addition to explaining these Federal laws, this revised edition of Give Yourself Credit includes information on the basic credit structure, credit cards in general, checking and savings accounts, and a section on the specific financial needs of previously married individuals.

It has given me great satisfaction to work on these issues with my colleagues on the Banking Committee. I am equally pleased to provide the opportunity for these laws to be compiled and explained in this publication. It is my intention to provide consumers with a complete sourcebook to aid in their making informed financial decisions.

Sincerely,

Frank Annunzio

Frank Annunzio
Chairman

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GIVE YOURSELF CREDIT

INTRODUCTION

The purpose of this guide is to provide basic information about credit and Federal consumer credit protection laws. It will explain what credit is, how to apply for credit, how to use credit responsibly, and what your rights are under current consumer credit laws. It will also provide advice on what to do if your credit situation gets out of hand and you find that your credit payments exceed your income.

Q: *What is credit?*

A: Buying now and paying later is the classic definition of credit. Credit permits you to obtain something now and pay for it later. Today, almost everyone uses credit in one form or another. Mortgages, credit cards, personal loans and car loans are all types of credit.

Q: *What is open end credit?*

A: Open end credit is credit which is extended on an ongoing basis, but usually with a limit on how much you may borrow. It is revolving credit, in that as you repay the credit, it is then available to you at a later date. The most common form of open end credit is a credit card.

Q: *What is closed end credit?*

A: Closed end credit is credit which is extended on a one-time, limited basis such as a car loan or a personal loan.

Q: *Who extends credit?*

A: Credit is most frequently extended by department stores, finance companies, oil companies, credit unions, commercial banks, savings and loan institutions, and credit card companies. Those who extend credit are called creditors.

Q: *How can I get credit?*

A: For credit to be extended to you, you have to be someone who a creditor considers to be a good credit risk or "creditworthy".

Q: *What does creditworthy mean?*

A: A creditworthy consumer is someone who the creditor believes can repay the amount borrowed over a certain period of time. This ability to repay is often judged on the basis of a credit scoring system.

Q: *What are credit scoring systems?*

A: Credit scoring systems are systems which try to predict whether you will meet your financial obligations and make regular payments on your bills. These systems consider various factors such as income, length of time on your job, length of time at one residence, previous credit history, amount of debts outstanding, stability of your checking and savings accounts, number of dependents and so on. Each creditor has different ways of evaluating applica-

tions, so do not be discouraged if one creditor turns you down. Other creditors may be willing to grant you credit.

Q: *How do I prove myself creditworthy and meet the standards of a credit scoring system if I have never had credit before?*

A: First, open a checking or savings account, or both. Then apply for credit gradually through retail store credit cards, a major bank credit card, or gasoline credit card, if you believe your budget can handle the financial load. Don't apply for more credit than you can afford. A credit card establishes you with credit as soon as your application has been approved.

You can prove your creditworthiness by making regular payments for the products or services you purchase. Every time you make a payment to a creditor you are building a favorable credit history. If you consistently repay your debts, your credit history should be favorable. Should you fail to repay the credit extended to you, however, you will establish a poor credit history, which may result in future credit applications being denied.

Q: *If I have never had credit before and don't have a credit history, can I get credit with a co-signer?*

A: In some cases credit may be extended to you if you have a responsible person with a good credit history who is willing to act as your co-signer. That is a person who guarantees payment of the debt. This protects the creditor by reducing the risks involved in extending you credit. Whoever co-signs for your credit is responsible for repaying your debt should you fail to do so.

If you successfully repay a co-signed debt, it indicates to the creditor your willingness to repay credit and your ability to responsibly handle financial debt. This helps in establishing a good credit history. Failing to repay a co-signed debt, however, will add to a poor credit history.

Q: *How can I tell how much credit I can afford?*

A: A good way to determine how much credit you can afford is by making a household budget chart similar to the example shown. If you find that you cannot afford credit purchases on your current income, you would be wise to continue to make cash purchases.

PERSONAL BUDGET WORKSHEET

	Monthly income and payments
A. Monthly Take-home Pay (plus other income: interest, dividends, etc.)..... A.	$_____
B. Regular Monthly Expenses	
Shelter (rent or mortgage).....	_____
Utilities (light, gas & water).....	_____
Food.....	_____
Clothing.....	_____
Transportation.....	_____
Telephone.....	_____
Laundry and cleaning.....	_____
Medical, dental & drugs.....	_____
Education, self-improvements.....	_____
Charities or church.....	_____
Entertainment, hobbies, etc.....	_____
Personal expenses (cosmetics, cigarettes, gifts, etc.....	_____
Current installment payments (as for furniture, freezers, refrigerators, etc.	_____
C. Bills Paid Quarterly, Semi-Annually or Annually (divide annual cost by 12 to get monthly payments, then leave that amount in your savings or checking accounts each month to accumulate until needed).....	_____
Taxes, if not included in mortgage or deducted from payroll.....	_____
Insurance (car, house and health).....	_____
Vacation costs.....	_____
Christmas or other annual gifts.....	_____
D. Savings Program Deposits	
Long-range savings account.....	_____
Ready-cash savings account.....	_____
E. Total Monthly Expenses..... E. (add B, C, & D)	$_____
F. Balance when subtracting E from A (A should equal or exceed E. If A exceeds E, you may take on additional credit obligations, make extra purchases with cash or expand your savings program with the balance shown)..... A.	_____
-E.	_____
Balance =	$_____
	_____

This introduction has addressed some of the basic principles behind the idea of credit. In the chapters that follow, credit will be discussed in more specific ways. Consumer credit laws which apply to almost every type of credit situation will be explained. In this way, readers of this guide will achieve a better understanding of credit and, more importantly, what their rights are as credit consumers.

CHAPTER I. CHARGE IT

Credit Cards

In the introduction to this guide, credit was discussed in broad terms. This chapter deals with a specific form of credit—credit cards. It explains how credit cards work, as well as what your responsibilities are if you accept a credit card. Always remember that credit should be used wisely. Never purchase more on credit than your income will allow you to repay.

Q: *Are there different types of credit cards?*

A: Yes. Credit cards differ depending on the creditor who issues the card. Credit cards may be obtained from financial institutions, department stores, oil companies, and travel and entertainment companies like American Express.

Credit cards issued by financial institutions, such as VISA or Mastercard, are known as "bank" cards and may be used at a variety of places for many purposes. With bank cards, the financial institution which issued you the credit card is responsible for collecting payment for the purchase which you make with that card.

Department stores may also issue credit cards for use only at that particular store.

Oil companies issue credit cards for the purchase of goods and services at that company's gasoline stations, and they may also have arrangements with certain hotels and motels to accept their specific credit card.

Travel and entertainment credit cards may also be used at a variety of places and may entitle you to different services such as travelers checks. An advantage to travel and entertainment cards is that they usually have higher credit limits than other credit cards, but you are usually required to pay the entire balance due each month. These cards also impose annual membership fees which add to the cost of credit. (See page 8.)

Q: *Who can apply for a credit card?*

A: Anyone can apply for a credit card as long as the individual is old enough to enter into a legal contract according to the laws of the State where the application is made.

Q: *Where can I apply for a credit card?*

A: Credit card applications are distributed in many of the places where cards are accepted, such as department stores, drug stores, or other retail outlets. Application forms are also available from the financial institution or company which is issuing the credit.

Q: *Are some credit cards easier to get than others?*

A: Yes. Obtaining a credit card from a merchant may be easier than obtaining a credit card from a financial institution. Merchants usually do not have as strict standards for granting credit as financial institutions. If you want to apply for a credit card

issued by a financial institution, it may be helpful to apply where you have an account or have previously received a loan.

Q: *What are some of the reasons for rejecting credit applications?*

A: Some main reasons for denying credit are:

—Credit application incomplete;
—Insufficient credit references;
—Unable to verify credit references;
—Temporary or irregular employment;
—Unable to verify employment;
—Length of employment;
—Insufficient income;
—Unable to verify income;
—Excessive obligations;
—Delinquent credit obligations;
—Inadequate collateral;
—Too short a period of residence;
—Temporary residence;
—Unable to verify residence;
—No credit file;
—Insufficient credit file;
—Garnishment, attachment, foreclosure, repossession, or suit;
—Bankruptcy;
—Credit is not granted to any applicant on the terms and conditions you request.

It is up to the individual creditor to decide whether or not to grant you credit. If you are denied credit, however, you must be notified of the reason. (For more information on denial of credit see Chapter VI.)

Q: *Once I get a credit card how will it work?*

A: When purchasing items in a department store, you present your credit card to the merchant, and a record is made of the purchase. You will then receive a monthly statement from the card issuer listing the purchases, payments, or returns that you made during the billing period. The statement will also show the total amount that you owe or any overpayments that you made which result in a credit on your account.

Q: *How much credit will I be allowed?*

A: Credit card companies sometimes limit the amount of credit which you are given according to your income as well as other factors. If you make $10,000 a year, a major bank credit card company may limit your spending to $300 when you are first accepted. After proving yourself creditworthy by making regular payments, the limit may be raised to $700 or more. Each creditor has its own standards for granting credit.

And remember that although two financial institutions may offer the same bank or credit card, the terms of the card may not be the same. It pays to shop for the best terms available, just as you would shop for the best deal on an automobile.

Q: *Will I have to pay for all of my credit purchases in full as soon as I receive my bill?*

A: No, not always. Credit cards are also called revolving charge accounts and offer you a payment plan choice. You may pay the balance of the monthly charges in full or in smaller payments

whichever fits your budget. The exception is travel and entertainment cards which usually require payment in full each month.

An advantage of a revolving credit account is that in many cases the use of credit is free as long as you pay the full amount that you owe before the finance charge is computed. A wise shopper can actually have free credit for almost two months if purchases are carefully timed. For example, let's assume that your billing date is the 25th of every month. If you charge a shirt on March 28, it probably will appear on your billing statement dated April 25. If your payment is due in 25 days, you will have until May 20 to pay for the shirt you bought on March 28. This free credit period, however, is being eliminated by many creditors who impose minimum finance charges. In other cases finance charges begin on the day you buy the item on credit and you get no free credit.

Q: *What is a finance charge?*

A: With credit cards, a finance charge is the amount of interest you have to pay on the unpaid balance on your account. The interest rate of finance charges varies from State to State and from creditor to creditor. In addition, some creditors charge annual or membership fees for the use of the card. These charges also vary from creditor to creditor. A wise consumer will shop around for the best credit buy just as he would shop around for the best buy on any purchase.

Q: *What is an annual percentage rate?*

A: The annual percentage rate or APR is the cost of credit expressed as a yearly rate. It is a key to the cost of the money you borrow. If one credit card carries a 15 percent APR and another an 18 percent APR, and if all other terms are the same, the finance charges on the 15 percent APR card will be lower than the card with an 18 percent APR. Annual percentage rates will be discussed in more detail in Chapter II.

Q: *How is the finance charge determined?*

A: The amount of the finance charge is determined by adding any fees to the interest the creditor charges. Interest depends on three factors: the amount borrowed, the annual percentage rate on the credit, and the length of time you have the loan. The terms of payment and the amount of finance charges for bank cards, such as VISA or Mastercard, vary from bank to bank.

With credit cards, a finance charge is often imposed only in the event that you do not pay your entire monthly balance by the date it is due. If you decide to pay your bill over time, you should be aware of the creditor's method of computing finance charges. Interest finance charges on credit cards are determined by multiplying the periodic rate by the balance owed. The periodic rate is often the annual percentage rate of 18 percent, divided into 12 monthly periods, giving a monthly periodic rate of 1.5 percent. The balance to which this rate is applied can be computed in a number of ways. There are basically three methods of computing the balance:

Adjusted balance method.—This is the most favorable method to consumers because the finance charge is figured on the unpaid balance at the *end* of the billing period.

Previous balance method.—This is the least favorable method to consumers because finance charges are computed on the amount owed at the *beginning* of the billing period. It does not

take into account payments made after that time or credits for returned merchandise.

Average daily balance method.—This is the most commonly used method for consumer accounts and it involves calculating interest on your average daily balance during the billing period. To lower your finance charges under this method, you should pay your bills promptly.

An example of each method follows:

Assume you have a $100 balance due on an account with an 18 percent APR, or 1.5 percent per month. Your bill is dated the first of the month and you make a $50 payment on the 15th, leaving a $50 balance due at the end of the month.

Adjusted Balance Method: Your finance charge would be 75¢, or 1.5 percent of the $50 balance due at the end of the month.

Previous Balance Method: Your finance charge would be $1.50 or 1.5 percent of the $100 balance before you made your $50 payment.

Average Daily Balance Method: Your finance charge would be $1.13, or 1.5 percent of the $75 average balance for the month. ($100 for the first 15 days of the month and $50 for the second part of the month). If you made your payment before the 15th, your finance charge would be less.

In some cases, such as cash advances on credit cards, a finance charge is imposed from the moment credit is extended.

Under the Truth in Lending Act, creditors are required to state on your bill which method is being used to compute your finance charges.

Q: *How long does a creditor have to credit my account once my payment is received?*

A: The creditor must credit your account with your payment on the day it is received if you made that payment in the manner specified on your bill. Usually your bill will have a payment envelope enclosed with the specific address to which the creditor wants your payment sent. If you pay in a different manner, then the creditor has up to five days to credit your account.

Q: *What is an annual membership fee?*

A: This is a charge for the use of the credit card, regardless of how often you use it, or whether you pay your balance in full or in monthly payments. It is not a finance charge. Annual membership fees usually range from $12 to $50 per year. Travel and entertainment card companies have traditionally charged annual membership fees to their cardholders. Many financial institutions issuing credit cards such as VISA and Mastercard have started to impose annual membership fees.

Some creditors also charge fees for additional cards issued to your account. For example, there might be a $25 annual fee for your card and $20 for each additional card issued to your dependents. Other creditors charge one fee regardless of how many cards are issued to the account. These fees add to the cost of credit, so be sure to check the credit terms involved carefully before accepting any credit card.

Q: *Can I be charged a surcharge, or an extra fee, for a product or service because I purchase it with a credit card?*

A: No. Under Federal law, a consumer cannot be charged an additional amount, or surcharge, by a merchant because a purchase is made with a credit card.

Q: *Can I receive a discount if I pay with cash?*

A: Yes. The law states that a merchant is free to offer a discount to customers who pay with cash. While this option is available, it is not mandatory.

Q: *Does a retailer have to advertise both a price for paying with cash and a price for credit purchases?*

A: There are advertising requirements for cash discount prices. For example, a gasoline dealer must indicate that the lower gasoline price is for cash purchases only. A dealer has the option of posting both cash and credit prices, or just the credit price. But if a lower price is advertised, it must clearly indicate that it is for cash purchases only.

Q: *Why would a merchant rather have a cash purchase than a credit card purchase?*

A: A merchant must pay the company which issues your credit card a percentage of the amount of the purchase made with that credit card. This adds to the merchant's business costs. The merchant may also have to wait several days or weeks for the credit card company to process the credit purchase and send the money. Therefore, receiving cash is preferable from the merchant's standpoint.

Q: *Can the credit card issuer ever hold me liable for charges made if my card is lost or stolen?*

A: If your credit card is lost or stolen, you can be held responsible for up to a $50 charge to your account by someone unauthorized to use your credit card. However, you can only be held responsible for $50 if:

1. You accepted the credit card from the creditor by asking for it, signing for it, or requesting a credit card for another person to use, such a spouse or a dependent;
2. The creditor told you that $50 is your maximum liability;
3. The creditor provided you with information on how to notify him if your card was stolen or lost, such as the creditor's address or telephone number;
4. The unauthorized charges were made before you notified the creditor of the loss or theft of your card. After you have notified the creditor, you are not responsible for any charges made on your account; and
5. The creditor provided some way to identify the user of the card as the authorized account holder, such as a signature panel on the back.

If these conditions are not met by the creditor, then you are not responsible for any charges made on you card if it is lost or stolen. Otherwise, remember that you are only responsible for up to $50 and only if those charges were made before you notified the creditor of the loss or theft or your card.

If your credit card is lost or stolen, it is not necessary to write to the card issuing company if you notified them of the loss by telephone. A letter, however, is a good follow-up and provides a record of your notifying the company of the loss of your card.

Below is a sample letter which could be used to inform a creditor of the loss or theft of a credit card.

(YOUR ADDRESS),
(DATE).

(COMPANY NAME),
Street Address,
City, State, Zip Code.

GENTLEMEN: This letter is to confirm my previous notification by telephone on (date that you called) that my credit card was stolen and that unauthorized charges may occur. The number of the credit card is (your credit card account number) and is listed under my full name (your full name) at (your billing address).

Thank you.

Sincerely,

(YOUR SIGNATURE)

If you decide not to write a letter as a follow-up to your telephone conversation, always be sure to write down the number you called, the date and the time of the call and the name of the person you spoke with if other than a recording.

Q: *Can I be held responsbile for charges made on my account by someone who obtained my credit card number, but didn't actually steal the card?*

A: No. If someone copies your credit card number when you make a purchase then returns the card to you, you are not responsible for any charges made with your number. An example might be someone using your credit card number for mail order or telephone purchases, but never having your card in their possession.

Q: *Can a credit card issuer send me a credit card if I have not requested one?*

A: No. A card issuer cannot send you a card unless you have requested it orally or in writing or have applied for the card. The only exception is when a card is a renewal or substitute card of one that you currently have.

Q: *If I buy a television set for $300, charge it on my bank credit card, pay $50 toward the purchase price when I get my bill, and then the set breaks, do I still have to continue to pay for the television?*

A: Maybe not. Whether or not you eventually will have to pay for the goods, and how much you will have to pay, depends on the law in your State. You may, however, withhold payment to the credit card issuer if you have defective goods and you meet the following conditions:

1. The purchase must have been for more than $50.
2. The purchase must have been made within the same State as the mailing address you provided the card issuer (or if not within the State, within 100 miles of that mailing address).
3. You must first have made an honest effort to clear up the problem with the company which sold you the goods.

The first two conditions do not apply if you charged the purchase on the seller's credit card. If, for example, you bought a defective $45 radio at a department store and charged it on the store's card,

the limiting conditions do not apply. This last situation is covered by the Fair Credit Billing Act which is explained in Chapter III.

In the television set example, you could withhold any money you spent to have the set repaired from the money you still owe on the television appearing on your credit card bill. Or, if you returned the set as defective, you could withhold $250, the $300 price minus the $50 you have already paid on the bill for a total of $250—until the dealer properly repaired the television set.

In situations with defective merchandise, it is always best to try to work out the differences with the merchant before withholding payment.

Q: *If I meet these conditions, does that mean that I no longer have to pay any money to the company which issued the credit card that I used to buy the defective goods or services?*

A: Not necessarily. It does mean that if the credit card issuer takes you to court to try to collect on your bill, you can use any legal defenses against him that you could have used against the company that sold you the defective goods or services.

SUMMARY

Let's sum up some advantages and disadvantages of credit cards. The advantages are:

—convenience—no cash is involved in the transaction, and credit cards also make ordering by telephone easier;
—free credit for 30 days (usually);
—credit ratings are established in your name;
—serves as additional identification when cashing checks;
—handy in financial emergencies;
—goods can be returned with less red tape;
—leverage if goods purchased are defective.

The disadvantages are:

—easy to overextend yourself;
—additional charges (finance charges) if you don't pay the balance in full monthly;
—possibility of billing errors;
—possibility of annual membership fee;
—responsibility for up to $50 for each lost or stolen credit card.

Also remember that all credit card issuers can change the terms of your credit agreement without your approval. It is important, therefore, that you keep aware of the terms of your credit card agreement through notices which may be enclosed in your monthly bill. Always know the terms of your credit agreements so that if they change, you are able to find a credit card issuer with terms more favorable to you.

If you are one of the many consumers using credit today, it is to your advantage to know your rights under the consumer credit laws. The time spent in becoming an aware credit consumer could save you money.

CONSUMER PROBLEMS

The following list of consumer problems deal with credit card transactions. Its purpose is to help readers reach a better understanding of the law through different consumer situations.

Q: *You lost your credit card and before you could report the loss, someone found the card and used it to charge a $40 purchase. Do you have to pay for that purchase?*

A: Yes. Under the law, you may be held liable for purchases up to a total of $50 which are made before you report the loss or theft of your credit card. Under no circumstances can you be held responsible for more than $50.

Q: *You give you credit card to a waiter in a restaurant. While the card is out of your possession, someone writes down the number and uses the number to make a purchase. Are you still responsible for paying up to $50 in purchases?*

A: No. You can be held liable only when your card is actually presented by a thief to a merchant. You cannot be held liable if a thief uses your credit card number to order merchandise by mail or telephone.

Q: *You never asked for a credit card, yet you get one in the mail anyway. May a creditor send you a card in the hope that you will use it?*

A: No. A creditor cannot send you a credit card unless you specifically request one, it is a replacement for one that you lost, or it is a renewal of one that you currently have.

Q: *You have had a major bank credit card for a year. You receive a notice that when your card is renewed, a $25 annual membership fee will be imposed. Is this legal?*

A: Yes. Creditors may impose annual membership fees on their credit cards if State law permits. Some States do not permit these fees or limit them.

You are also free not to use the card once the fee is imposed, and you may apply for a new bank credit card from a creditor who does not have annual membership fee requirements. If you do not accept the use of the credit card after the annual fee is imposed, you do not have to pay it.

Q: *You are going to purchase a washing machine and charge it on your credit card. The merchant informs you that he will have to charge you an additional 5 percent because you are making the purchase with a credit card. Is this legal?*

A: No. It is against the law for merchants to charge consumers an additional fee or surcharge because a purchase is made with a credit card.

Q: *You are going to purchase a washing machine with a credit card and the merchant tells you that he will give you a 10 percent discount if you pay in cash rather than with a credit card. Is this legal?*

A: Yes. Under the law, a merchant may offer a consumer a discount for purchases made with cash. The amount of the discount is up to the merchant. Cash discount programs are entirely voluntary.

Q: *The motor on the washing machine you bought with your major credit card burned out after two months. The merchant who sold you the machine guaranteed it for one year, but now won't fix it. Can you withhold payment on your credit card?*

A: Probably yes, but it depends on the laws in your State. You may, however, withhold payment from the credit card issuer if the purchase was for more than $50, the purchase was made in the

same State as your mailing address (or if not within the State, within 100 miles of that address), and you first made an honest effort to clear up the problem with the merchant who sold you the washing machine. If you meet those requirements, then you could withhold the balance you owe on the washing machine until the merchant fixes it, or withhold the amount it costs you to have the machine repaired. In situations like this, however, withholding payments should be used only as a last resort. It is always better to try to resolve the dispute directly with the merchant.

Q: *You overpaid your credit card account and now have a credit of $50. Can you receive a refund or do you have to leave the credit on your account?*

A: You are entitled to a cash refund within seven business days if you request one in writing. You don't have to leave the credit on your account. If you don't write to the creditor asking for the refund, the creditor is obligated to send you a refund of the credit after six months. This policy applies if the credit is greater than one dollar.

Q: *You receive a notice that effective immediately the interest rate on your credit card is increased from 18 to 24 percent. Can the creditor do this?*

A: No. A creditor must send you a written notice of an increase in your interest rate at least 15 days before the new rate takes effect. The only exceptions are if you previously agreed to the increase or if the increase is due to your delinquency or default on the account.

Q: *You make a payment at one of the branch stores of a creditor, rather than by mail. That payment is not credited to your account until four days later. Is that permitted?*

A: Yes. If the creditor specifies that payment must be made in a certain manner, such as by mail, the creditor can take up to five days to credit your account if you pay in a different manner. If you pay in the manner specified by the creditor, your payment must be credited on the day it is received.

CHAPTER II. SHOPPING FOR A LOAN

Truth in Lending Act

Before 1968, if you called several different financial institutions to compare interest rates on a $1,000 loan payable in monthly installments for a year, you may have heard:

1. "We'll lend you $1,000 at a nine percent discount rate";
2. "Our rate on $1,000 is $8 per $100";
3. "We charge a $25 loan fee and nine percent simple interest";
4. "Interest on a $1,000 loan is at a 12 percent annual percentage rate (APR)."

While it may have appeared that the loans at $8 per $100 or a nine percent discount rate would have been the best buy, the annual percentage rate (APR) on those loans would have been nearly 14½ percent and 17¾ percent respectively. Therefore, to pay the least amount of money in interest payments, you should have chosen the loan with the 12 percent annual percentage rate.

Before the Truth in Lending Act was passed in 1968, consumers were easily confused by the different methods used by creditors to compute interest rates on loans. Because there was no standard term, it was difficult to compare interest rates on loans.

No matter how many different methods of stating interest rates were used before the Truth in Lending Act was passed, today all creditors *must* disclose to you the cost of a loan as an annual percentage rate. The APR is the relative cost of credit in percentage terms and is your *key* to comparing loan costs. You know you are getting the most for your money when you obtain a loan with the lowest annual percentage rate available. You should check with several different lenders (banks, credit unions, savings and loan associations, etc.) to find which offers the type of loan that you need at the lowest annual percentage rate.

Q: *What is the annual percentage rate (APR)?*

A: The annual percentage rate (APR) is the cost of credit expressed as a yearly rate. You should look at the APR on a loan as you would the unit price of groceries that you buy. Say, for example, that you are shopping for laundry detergent and there are two brands of similar quality on the shelf. One box is 48 ounces and is priced $1.26. Another box weighing 64 ounces costs $1.80. While it may seem that the bigger box is the better buy, the unit price of the smaller box is 42¢ per pound while the larger one is 45¢ per pound. Therefore, the smaller box is the better buy. You should look at the unit price on a loan, or the APR, the same way. All other factors being the same, the loan with the lowest APR is the best buy.

Q: *Does the Truth in Lending Act require a lender to tell me anything other than the annual percentage rate on a loan?*

A: Yes. In addition to the APR, when you apply for any type of loan a lender must also tell you other facts about the loan agreement. Some of the most useful of these are the amount financed, the number and amounts of payments, the finance charge, and the total amount you will have to repay.

Q: *Does a 12 percent APR mean that I pay back $120 for every $1,000 I borrow?*

A: Not usually. If you take out a $1,000 loan at 12 percent APR for one year, and repay the loan in 12 equal monthly payments, at the end of the year you will have paid $1,066, or the original $1,000 borrowed plus a $66 finance charge. You would pay $120 in finance charges only if you repaid the entire $1,000 in one payment at the end of the year. By making 12 monthly payments of $88.83 each, part of every payment would go toward the $1,000 borrowed and part toward the finance charge. By the twelfth payment you would owe only $88.83, or $87.95 in principal and 88¢ in finance charges. Remember that with each payment you make on a loan, your loan balance goes down, and therefore, so does your finance charge.

Q: *How does the APR help me to know what a loan will cost?*

A: Let's go back to the example at the beginning of this chapter and compare each loan.

Example	Amount financed	APR (percent)	Finance charge
No. 1	$1,000	17.75%	$99
No. 2	1,000	14.5%	88
No. 3	975	13.75%	73
No. 4	1,000	12.00%	66

You can see that as the APR decreases so does the finance charge. This means that the lower the APR, the lower the cost of your loan.

Q: *Why is loan number three only $975 rather than $1,000?*

A: Remember that loan #3 has a $25 loan fee and nine percent simple interest. This $25 fee is a prepaid finance charge and is often taken by the creditor from the amount borrowed when you take out the loan. In this situation, if you need $1,000 and there is a $25 loan fee as a prepaid finance charge, you would have to borrow $1,025 to cover this cost.

Q: *What if I pay off the loan before it is due? Do I have to pay the entire finance charge on the loan?*

A: Probably not. Let's go back to the example of the one-year, $1,000 loan at a 12 percent APR. Remember that in making 12 equal monthly payments of $88.83, you would have paid a total of $1,066 by the end of the year. If you make six monthly payments of $88.83 (a total of $532.98), and then pay off the balance of the loan, you should not have to pay any more finance charges. You only have to pay the balance owed on the $1,000 originally borrowed.

It is important that you read your loan contract to see if the creditor imposes a penalty if you pay off your loan early. If your finance charges have been precomputed, that is, the $66 finance charge was calculated at the beginning of the loan, your Truth in Lending statement would tell you if you are entitled to a refund of

part of the finance charge. You also would have to read your loan contract to determine how much of a refund you would receive.

Q: *Does that mean if I pay off a one year, $1,000 loan after six months, I only have to pay $33 in finance charges, or half the total finance charge?*

A: No, you will probably pay more. While your monthly payments remain the same each month ($88.83), the division of that payment between the principal loan balance and finance charges changes. For example, your first payment of $88.83 consists of $10 in finance charges and $78.83 in principal. Your twelfth payment consists of only 88 cents in finance charges and $87.95 in principal. For the first six months of the loan, more of that monthly payment goes toward finance charges than in the last six months. Therefore, if you pay off a loan after making six monthly payments, you will have paid more than half of your annual finance charge.

Q: *Can a lender penalize me by making me pay an extra charge if I pay a loan off before it is due?*

A: Yes. For some loans, such as mortgages, lenders can charge a prepayment penalty for paying off a loan early. The lender must tell you in the Truth in Lending statement, whether you will have to pay a penalty for prepayment of a loan. It must be disclosed to you at the time you obtain the money that there would be a prepayment penalty and refer you to your contract for the details. Remember that in addition to prepayment penalties, some portions of the finance charge, such as loan origination fees (or points), filing fees, and service charges paid when you take out the loan, are not refundable regardless of when you make your last payment.

Q: *How is the amount of the finance charge computed if I pay off the loan early?*

A: There are several methods used by creditors to compute your refund. The *least favorable* to the consumer is called the "Rule of 78". The *most favorable* is the actuarial method.

The "Rule of 78" got its name by adding the numbers from one through twelve. These numbers represent the number of months in a year, and the "Rule of 78" was devised when most loans were only for a year's time. If you have a short-term loan (i.e. one year), with a low APR, the difference between these two methods is minimal. The difference between the amount of your refund increases as the number of payments and the APR increases. It is important to remember, however, that your refund will ALWAYS be greater when the actuarial method is used. The "Rule of 78" is NEVER the most beneficial method to consumers.

Q: *What are loan origination fees or points?*

A: Loan origination fees, or points, are common terms used in mortgage financing. They are types of prepaid finance charges. Basically, one point is equal to one percent of the amount you are going to finance on your home. It is a finance charge which the lender collects for servicing your loan and it is not refundable. For example, if you were shopping for a $50,000 mortgage, one lender might quote a current mortgage rate of 14 percent with two points. That would mean that in addition to your downpayment, you would have to pay two points on $50,000, or $1,000 (two percent of $50,000). If you had to pay one point, you would pay $500. Points

may be paid by either the buyers or the sellers of homes, or by both.

Q: *Does the APR really have that much effect on my monthly mortgage payments?*

A: Yes. If you are shopping for a $50,000 mortgage for 30 years, the APR on that loan may be the difference between being able to afford the mortgage or having a home out of your financial reach. The chart below shows monthly mortgage payments, and total finance charges over 30 years, at several APRs.

Consider a $50,000 mortgage for 30 years, at different APRs:

APR (percent)	Monthly payment	Total finance charge
	$514.31	$135,150
12	553.10	149,165
13	592.44	163,275
14	632.23	177,600
15	672.38	192,055
16	712.84	206,620
17		

You can see the same loan could cost almost $200 more a month and $71,000 over 30 years when the APR goes up five points.

Q: *What are some important terms to consider when I shop for the best loan agreement?*

A: In addition to the annual percentage rate and finance charge, you should be aware of the following terms of your contract:

1. The amount financed—the total amount of money you will get to use. Remember that prepaid finance charges, insurance costs, and other items may come directly from the amount you are borrowing. These items reduce the amount financed. If you need $1,000, be sure that the terms of your loan give you $1,000 to use. If you are not sure ask your creditor;

2. The downpayment—the amount of money you put down will help determine your monthly payments. The larger your downpayment, the smaller your loan, finance charges, and monthly payments are likely to be. Creditors will often charge a lower APR with a larger downpayment;

3. The size of payments—make sure you can comfortably afford the installment payment (usually monthly) arranged by the creditor;

4. Terms of payment—make sure that the payment amount quoted also includes the last payment. Small monthly payments quoted may indicate there will be one oversized payment, called a balloon payment, at the end of the loan period. This payment might be difficult for you to make and may even cause you to default, or have to refinance the last payment (For more information on balloon payments see Chapter V, Consumer Leasing);

5. Number of payments—the length of your loan will help determine how much it will cost you. The longer you owe money, the more it will cost in finance charges.

For example, if you have a choice of financing a $5,000 car loan at 15 percent APR for one, two, three, or four years, the total

amount paid in finance charges will increase the longer you keep the loan. See the chart below.

Amount financed	1 year		2 years		3 years		4 years	
	Monthly payment	Total finance charge	Monthly payment	Total finance charge	Monthly payment	Total finance charge	Monthly payment	Total finance charge
$5,000	$451	$416	$242	$819	$173	$1,240	$139	$1,680

By keeping the loan for four years, rather than one year, you will pay an additional $1,264 in finance charges. If you choose a three year repayment schedule over a four year one, your monthly payment would only be $34 higher, but you would pay off the loan a year earlier and save $440 in finance charges as well.

6. Early payment—if you pay off the loan before the due date, find out if there is a prepayment penalty or if any of the finance charge will be refunded if the finance charge is pre-computed;

7. Missed payments—know what penalties you will face if you miss payments;

8. Late payments—know what your grace period is (the time allowed for your payment to be received after the due date) and what charges, if any, will be imposed if payment is received after the grace period;

9. Default—know what consequences you will face if you default (miss your payments or make only a partial payment), such as repossession of your security items or court costs;

10. Security—be aware of your obligations when you offer your home, car, or other personal effects for security.

For an example of a filled-in credit sales disclosure form see page 20.

SAMPLE CREDIT SALES DISCLOSURE FORM

Big Wheel Auto — Alice Green

ANNUAL PERCENTAGE RATE The cost of your credit as a yearly rate.	FINANCE CHARGE The dollar amount the credit will cost you	Amount Financed The amount of credit provided to you or on your behalf.	Total of Payments The amount you will have paid after you have made all payments as scheduled.	Total Sale Price The total cost of your purchase on credit, including your downpayment of $ 1500 -
14.84 %	$1496.80	$6107.50	$7604.30	$9129.30

You have the right to receive at this time an itemization of the Amount Financed.
☐ I want an itemization. ☒ I do not want an itemization.

Your payment schedule will be:

Number of Payments	Amount of Payments	When Payments Are Due
36	$211.23	Monthly beginning 6-1-81

Insurance
Credit life insurance and credit disability insurance are not required to obtain credit, and will not be provided unless you sign and agree to pay the additional cost.

Type	Premium	Signature	
Credit Life	$120 -	I want credit life insurance.	Alice Green Signature
Credit Disability		I want credit disability insurance.	Signature
Credit Life and Disability		I want credit life and disability insurance.	Signature

Security: You are giving a security interest in:
☒ the goods being purchased.
☐ _____

Filing fees $ 12.50 **Non-filing insurance $** _____

Late Charge: If a payment is late, you will be charged $10.

Prepayment: If you pay off early, you
☐ may ☐ will not have to pay a penalty.
☒ may ☐ will not be entitled to a refund of part of the finance charge.

See your contract documents for any additional information about nonpayment, default, any required repayment in full before the scheduled date, and prepayment refunds and penalties.

I have received a copy of this statement.

Alice Green — 5-1-81
Signature — Date

e means an estimate

Q: *Are there criminal penalties for violation of the Truth in Lending Act?*

A: Yes. Anyone who willfully and knowingly violates the Truth in Lending Act is subject to a fine of not more than $5,000 or imprisonment for not more than one year, or both.

Q: *May I sue a creditor if he does not follow the requirements of the Truth in Lending Act relating to credit transactions?*

A: Yes. You may sue, and if you win your case in court you may recover:

1. The amount of any actual damages you have suffered because of the creditor's failure to follow the law; *plus*
2. For certain violations, twice the amount of any finance charge involved in the transaction, if you alone are suing the creditor in an individual legal action. The creditor will be responsible to you for at least $100 and at most $1,000; or
3. If the creditor is being sued in a class action (a lawsuit in which one or several persons represent the interests of a group), the court may hold the creditor responsible to the group for up to $500,000 or one percent of the creditor's net worth whichever is less; *plus*
4. Court costs and a reasonable fee for your attorney.

Q: *Are there situations when a creditor will not be legally liable even though he did not follow the requirements of the law?*

A: Yes. These situations are called legal defenses. For example, creditors cannot be held legally liable if they are able to show in court that their violation was unintentional, as well as showing that the violation was an error made in good faith despite having had procedures which would ordinarily prevent such mistakes. In addition, creditors will not be legally liable if they inform the consumer of an error within 60 days after discovering it, and adjust the account so that the customer will not pay a finance charge in excess of the amount disclosed. Creditors cannot use this defense if the consumer has notified the creditor in writing of the error or has initiated a lawsuit.

Q: *What credit terms are creditors required to list in their advertisements for credit?*

A: For open-end credit plans, such as most types of credit cards or department store revolving charge accounts, if an advertisement lists any of the terms of the credit plan, it must also clearly list:

1. Any minimum, per transaction, fixed amount, or similar charge which could be imposed;
2. The periodic rate expressed as an annual percentage rate where a periodic rate is used to compute the finance charge. If the open-end credit plan has a variable periodic rate, (a rate which may change from month to month) that fact must be stated as well as any membership fee that may be imposed;

In advertisements for closed-end credit (car loans, for example), a creditor must list the annual percentage rate (APR) if he states any rate of finance charge. In addition, if the advertisement states:

1. The amount or percentage of the downpayment;
2. The amount of any installment payment;
3. The dollar amount of any finance charge;
4. The number of installments; or
5. The repayment period;

then the advertisement must also include the following items:

1. The amount or percentage of the downpayment, if any;
2. The amount of repayment; and
3. The annual percentage rate.

Q: *If I use my home as security to finance a new roof and then decide not to have the home improvement made, can I cancel my agreement?*

A: Yes. The law protects you when you use your home as security in a credit transaction. If you take out a "second mortgage" to finance a major home repair, the law gives you three business days, known as a "cooling off" period, to cancel the transaction if you change your mind.

When you enter into an agreement where your home is used as security, the creditor is required by law to give you a written notice of your right to cancel. (See form on page 26.) If you decide to cancel the transaction, you must notify the creditor *in writing, a telephone call is not enough.* You are entitled to receive a refund within 20 days of any downpayment given to the creditor if you cancel the transaction.

There are several different ways to cancel this type of transaction:

1. Sign and date the notice given to you by the creditor, and mail or deliver it to the creditor's address as shown on the notice. The notice will be considered given when mailed or delivered; or
2. Send a telegram to the creditor at the address shown on the notice given to you by the creditor. The telegram message must contain a short description of the transaction being cancelled and will be considered given at the time you filed it for transmission; or
3. Write a letter containing a short description of the transaction being cancelled, sign and date it, and mail or deliver it to the creditor at the address shown on the notice given to you by the creditor.

Notification by mail will be considered given when mailed. See page 27 for a sample letter.

You should note, however, that this right of cancellation does not apply to a first mortgage to finance the purchase of your home.

Q: *How much time do I have to cancel a transaction of the type mentioned in the previous question if the creditor does not give me written notice of my right to cancel the transaction?*

A: If the creditor does not give you written notice of your right to cancel the credit transaction and the other disclosures required by the Truth in Lending Act (see page 26), your right to cancel the agreement is extended to:

1. Three years after the date that you signed the contract; or
2. On the date that you sell the property involved, whichever comes first.

You may receive additional time, however, if a Federal agency begins any type of enforcement action against the lender for violations of this section within three years after you signed your contract. The case must, however, be based in part or entirely on your right to cancel your agreement. Should the agency find that a vio-

lation did occur, the time allowed for you to cancel your agreement is extended to one year after the conclusion of the Federal case.

Q: *What if I need repair work done immediately and don't want to wait three business days?*

A: You may give up your right to cancel the transaction and have the contractor start work before the three business days are up. You should give up your right to cancel the agreement only after careful thought and where there is a real emergency. If you decide to give up your right to cancel your agreement, you must notify the creditor in writing that you have a bona fide personal financial emergency, describe the emergency, and that consequently you need the credit immediately. If you wish to waive or modify your right to cancel, you and anyone else who has the right to cancel, must also sign and date your statement. A printed form cannot be used. (See page 28 for a sample letter.)

CONSUMER PROBLEMS

The following list of consumer problems deal with the Truth in Lending Act. Its purpose is to help readers reach a better understanding of the law through different consumer situations.

Q: *You are looking for a car loan. One financial institution offers loans with 25 percent down, up to 48 months to repay, and a 16 percent APR. Another financial institution requires 25 percent down, up to 36 months to repay and a 15½ percent APR. Would the loan with the 15½ percent APR be cheaper?*

A: Yes, in this case the loan with the 15½ percent APR would cost less, but it may not be the loan that you would want. The APR is a key to your loan cost, but you must also look at how much down and how long you have to repay the loan. In this case, the 15½-percent APR loan would ultimately cost less, but would cost $30 more per month.

This chart compares the two loans:

	Loan 1	Loan 2
Car price	$6,000	$6,000
Downpayment	$1,500	$1,500
Amount financed	$4,500	$4,500
APR (percent)	16	15½
Number of payments	48	36
Amount of payments	$128	$158
Finance charge	$1,634	$1,170

By putting 25 percent down and spreading your payments out over 48 months, you would have a lower monthly payment but you would end up paying more in finance charges. When shopping for a loan, always remember to look at the entire picture and decide what best fits your needs.

Q: *You take out a loan for four years and decide to pay it off in three. The creditor charges you a penalty for prepaying the loan. Is this legal?*

A: That depends on State law. The creditor must tell you in the Truth in Lending statement whether there is a prepayment penal-

ty. The statement must also refer you to your loan contract for the details of the prepayment penalty.

Q: *You are selling a house. The buyer qualifies for a mortgage but the mortgage issuer requires you, the seller, to pay two points. Is this legal?*

A: Yes, it is legal, but you may not have to accept the sales contract on your house under those conditions. Financial institutions can require that points be paid by the buyer or the seller of homes or both. Such terms should be worked out between the seller and the buyer prior to signing the contract for the sale of a house.

Q: *You are going to use your home as security on a loan, but then change your mind. Can you cancel a credit agreement using your home as security once it is signed?*

A: Yes, but you only have three business days in which to do it. You must be notified of this right to cancel your credit agreement when you sign for the loan. For details of your rights should a creditor not inform you of your right to cancel, see page 22.

Q: *You find that a creditor has not followed the provisions of the Truth in Lending Act. What can you do?*

A: You can sue the creditor, and you may recover damages. Remember, however, that a creditor will not be liable for violations of the Truth in Lending Act if the creditor can prove that the violation was not intentional, procedures were set up to avoid such violations, and that the error was made in good faith.

Q: *You see a car advertisement which states that you can buy a car with $25 down. Is that all the advertisement needs to say?*

A: No. The advertisement must also state the terms of repayment and the APR on the loan, if it states the downpayment.

Q: *You apply for a $500 loan and are approved. When you go to pick up the money you find that there is only $475 and that the creditor has taken a $25 loan fee. Is this legal?*

A: Yes it is legal, but the creditor must tell you that there is such a loan fee before you enter into the contract for the loan.

Q: *You apply for a loan and are told that the loan carries a nine percent simple interest rate. Is this all that you need to be told?*

A: No. Every creditor must tell you the cost of the loan in terms of an annual percentage rate. This is the law. Other terms of the loan must also be explained. For a full list see page 21.

Q: *You pay off a loan early and are due a refund on your finance charge. Do you have a choice on which method the creditor uses to compute your refund?*

A: No. Your contract with the creditor or your State's law determines what method is used. It is important for you to remember that the "Rule of 78" is least favorable to the consumer and the actuarial method is most favorable. Check your loan contract before you sign to see which method is used in prepayment situations.

Q: *You are shopping for a loan. One loan has a 14 percent APR and the other has a 15 percent APR. Should you automatically choose the loan with the lower APR?*

A: No. When shopping for a loan, you should consider many different items. While the APR is very important, you should also consider such things as the amount financed, the downpayment, the size of the payments, the terms of the payments, the number of

payments, prepayment terms, missed payment penalties, late payment penalties, default terms and security terms. All of these items are important. If you do not understand any of these things, ask your creditor to explain them.

Always remember that you have the right to be informed of the conditions of your loan agreements before you sign. If anything that was discussed in this chapter is not clear to you when you apply for a loan, ASK. It is your right. Remember, you cannot ask too many questions. You are the one who has to repay the money, so make certain that you have all the information you need. If you do not understand something, ask for a simpler explanation.

SAMPLE NOTICE OF RIGHT TO CANCEL

Your Right to Cancel

You are entering into a transaction that will result in a lien on your home. You have a legal right under Federal law to cancel this transaction without cost, within three business days from whichever of the following events occurs last:

(1) the date of the transaction, which is _____; or

(2) the date you received your Truth in in Lending disclosures; or

(3) the date you received this notice of your right to cancel.

If you cancel the transaction, the lien is also cancelled. Within 20 calendar days after we receive your notice, we must take the steps necessary to reflect the fact that the lien on your home has been cancelled, and we must return to you any money or property you have given to us or to anyone else in connection with this transaction.

You may keep any money or property we have given you until we have done the things mentioned above, but you must then offer to return the money or property. If it is impractical or unfair for you to return the property, you must offer its reasonable value. You may offer to return the property at your home or at the location of the property. Money must be returned to the address below. If we do not take possession of the money or property within 20 calendar days of your offer, you may keep it without further obligation.

How to Cancel

If you decide to cancel this transaction, you may do so by notifying us in writing, at:

_____
(creditor's name and business address)

You may use any written statement that is signed and dated by you and states your intention to cancel, or you may use this notice by dating and signing below. Keep one copy of this notice because it contains important information about your rights.

If you cancel by mail or telegram, you must send the notice no later than midnight of:

_____
(Date)

(or midnight of the third business day following the latest of the three events listed above). If you send or deliver your written notice to cancel some other way, it must be delivered to the above address no later than that time.

I WISH TO CANCEL

_____ _____
(Customer's Signature) (Date)

SAMPLE LETTER CANCELLING A CREDIT TRANSACTION

(Your Address)
(Date)

(Company Name)
Street Address
City, State, Zip Code

Gentlemen:

This is to inform you that I wish to cancel my agreement to add a room to my home at the above address. Since we made the agreement yesterday, I have changed my mind.

I appreciate your help and will contact you when I plan to add the room.

Sincerely,

(Your Signature)

SAMPLE LETTER TO A CONTRACTOR TO START WORK

WITHOUT THE THREE-DAY WAITING PERIOD

(Your Address)
(Date)

(Company Name)
Street Address
City, State, Zip Code

Gentlemen:

I understand that the Truth in Lending Act gives me three days to cancel my agreement with you to fix the roof of my home located at (your complete address). I would rather go ahead with our agreement using my home as security without waiting for this three-day period to end. I need to have the roof repaired immediately since the structure is being damaged by rain, and I do not have the money to pay for the repairs without this credit agreement.

I hereby waive my right to cancel our credit agreement and would like you to go ahead with the plans we discussed this morning as soon as possible.

Thank you.

Sincerely,

(Your Signature)

CHAPTER III. BILLING PROBLEMS

Fair Credit Billing Act

The Fair Credit Billing Act was enacted to help protect you against unfair and inaccurate billing practices. The law specifically applies to "open-end" creditors who issue you credit cards, such as financial institutions, and creditors who issue revolving charge accounts, such as department stores. The law does not apply to bills sent by utility companies or any type of "closed-end" credit accounts, such as car loans or personal loans.

Before this law was passed, you might have spent months, or even years, trying to straighten out your account if there was a mistake on your bill. With the passage of this law, a procedure was established for clearing up possible errors on your bills. The Fair Credit Billing Act also limits the amount of time a creditor may take in replying to you when you have a billing dispute.

If a creditor does not follow the procedures established by this law for handling your billing error, you do not have to pay the amount of money in dispute whether you owe it or not, to a maximum of $50. If the creditor does follow the procedures of the law, and no billing error is found, then you are obligated to pay the amount in question. You are also responsible for paying any amount on your account which is not being disputed.

This chapter will explain your rights and obligations under the Fair Credit Billing Act.

Q: *What is a billing error?*

A: Under the law, you have a billing error if your billing statement:

1. Lists a charge for something you did not buy;
2. Lists a charge and you do not know what it refers to. (In a situation like this, you can ask the company to send you "documentary evidence" concerning the charge, such as a copy of the charge slip);
3. Lists goods or services which were not accepted by you, or by a person who you asked to accept them;
4. Lists goods or services which were not delivered according to your agreement with the creditor. For example:
   a. if delivery was made to the wrong address;
   b. if delivery was made late;
   c. if the wrong quantity was delivered; or
   d. if the goods or services delivered were not the same as those described in your agreement with the company;
5. Does not show proper credit for payments made or for goods returned;
6. Shows a mistake in arithmetic (this includes prices, finance charges, late payment charges, or any other charges); or

7. Was not mailed or delivered to your current address as long as you informed the creditor in writing of any new address at least 20 days before the closing date of the billing cycle for which the bill was incorrectly mailed or delivered.

Q: *Are there some disputes that are not billing errors?*

A: Yes. Trouble with the quality of the goods that you buy is not covered by this law. For example, if you bought a toaster on credit that always burns toast, that is not a billing error. You have other rights, however, that may help you get the toaster fixed or your money refunded. (See Chapter I, return of defective merchandise purchased with a credit card, page 10.)

Q: *What do I have to do to have a billing error resolved?*

A: To have a billing error resolved you must:

1. Notify the creditor in writing that there is a billing error. Your letter must be received by the creditor within 60 days from the date the creditor mailed you the first statement containing the error. A telephone call will not protect your rights under the law. If you do call, follow-up the call with a letter;

2. You must send the letter to the proper address. You can get that address from the billing statement. It will be identified as the address to send inquiries or billing error notices to;

3. In your letter to the creditor you should include the following information (see page 36 for a sample letter):

a. your name and account number;

b. your belief that the creditor has made a billing error and the date, type, and dollar amount of that error; and

c. why you think your billing statement contains an error. If for example, your statement lists a charge for an electric typewriter which you never bought, state that fact;

4. You should make a copy of your letter to the creditor so you have a record of what you sent. If your billing dispute involves a large sum of money, you should send your letter by certified mail, "return receipt requested." This way you are sure that the creditor received your letter. It also gives you a record of delivery if you have to prove that the creditor received the letter.

Q: *What response does a creditor have to make to my notice of a billing error?*

A: A creditor must do several things:

1. Within 30 days after the creditor receives your letter the creditor must send you a written acknowledgement of receipt. That acknowledgement may also include the creditor's decision concerning the possible error, with a correction notice or an explanation of why the creditor believes there was no error. If you do not receive the acknowledgement, send the creditor a copy of your original letter. If you do that within the 60-day period you have to notify the creditor of the billing error, you will protect your rights;

2. If the creditor has not included its decision along with its acknowledgement of your letter, it has two complete *billing periods** (or a maximum of 90 days) after it receives your letter to tell you of its decision. The creditor is required to either:

---

*A billing period refers to how often the creditor sends out its billing statements. If you receive a bill every month from the creditor, then the creditor has a monthly billing period.

a. correct the error, credit your account with any disputed amount and any related finance charges or other charges, and send you a correction notice. The creditor may inform you of its correction on a billing statement, if that statement clearly identifies the amount credited to your account in response to your letter; or

b. conduct a reasonable investigation and send you a written notice telling you the reasons why it believes there has not been a billing error;

3. The creditor's explanation may be sent with your monthly billing. You may ask the creditor to send you charge slips or other documentary evidence concerning the amount that you owe. If the creditor determines there has not been an error and wants you to pay the disputed charge and any related finance charges, the creditor must promptly notify you in writing of the amount and the date by which the payment is due. If the creditor normally gives you time in which to pay your bill without a finance charge, it must give you that same amount of time, but never less than ten days.

Q: *What are my rights while the billing dispute is being resolved?*

A: While this "billing dispute" procedure is going on, you have several rights:

1. You don't have to pay the amount of money in dispute. This means that until the creditor gives you the reasons why it believes you owe the charge in dispute, it cannot force you to pay the charge or even try to collect it;

2. You don't have to pay any finance charges based on the amount of money in dispute. The creditor may, however, use the disputed charges in deciding that you have reached your credit limit. For example, if your credit limit is $250 and you have a disputed charge of $200 on your account, a charge of $55 will put you over your credit limit. The creditor may maintain that you have reached your credit limit of $250 and that you can't charge anything more until you reduce the outstanding balance on your account. This may be done even if you wrote a letter disputing the $200 charge. Also, the creditor may continue to show the charge and related other charges on your billing statements, even though you do not have to pay them;

3. The creditor may not close your account because you refuse to pay the amount in dispute;

4. The creditor may not threaten to ruin your credit rating or credit standing because you fail to pay the amount in dispute;

5. The creditor may not report to anyone that the amount in dispute is delinquent if you do not pay while the dispute is being resolved.

Q: *What are my rights if the creditor sends me an explanation as to why there is no error?*

A: If the creditor discovers an error different than the one you alleged, it is obligated to correct that error and credit your account. If the creditor states that there has not been an error and informs you of the reasons, you have at least ten days to pay the amount in question before additional charges may be added. The creditor may

not report your account as "delinquent" to anyone, such as a credit bureau, until this time passes. If your credit agreement provides for a longer time than this to pay undisputed amounts before finance charges are added, then the creditor may not report you as "delinquent" until this longer period of time has passed. So, if your credit agreement allows 30 days in which to pay your bill before finance charges are added, you are given 30 days rather than ten days allowed by the law to pay toward the disputed amount.

You also should remember that if no billing error was made, you will be responsible for paying the disputed amount and the finance charges on the disputed amount for the time during which you were disputing the charge.

Q: *Do I have any rights if I don't agree with the creditor's explanation?*

A: If you write to the creditor about a billing error and the creditor's explanation as to why there was no error does not satisfy you, you should write another letter to the creditor and say that you still believe there is a mistake on your bill. This letter must be received within the time period permitted to repay the amount in dispute (see previous question). Although the creditor is allowed to try to collect the amount that is in dispute, you gain several important advantages when you write a second a letter to the creditor:

1. The creditor can't report to a credit bureau that you are delinquent in your bill payment unless it also tells the credit bureau that you believe that you don't owe the money;
2. The creditor must report to you the name and address of everyone who receives a report of your delinquency; and
3. If the creditor later clears up your dispute, it must tell everyone who the disputed delinquency was reported to that the dispute has been settled.

Please note, however, that if the creditor has fully complied with his error correction responsibilities, he is not required to reinvestigate the same error.

Q: *What are my rights if the creditor does not follow the law?*

A: If a creditor fails to reply to your letter within the time periods stated above, or violates any of the other above rights, he forfeits the amount of money in dispute, together with any finance charges computed on that amount, up to a maximum of $50. This happens whether or not you actually owe the money. You should remember, however, that you are responsible for paying amounts that you owe which are not in dispute.

Q: *Can I sue if the creditor doesn't follow the requirements of the law?*

A: Yes, but if the creditor can show that its mistake was unintentional and that procedures had been set up to avoid such errors, it cannot be held liable.

If the company is liable and you win your case in court, you may receive:

1. Payment for any actual financial injury to you resulting from the creditor's failure to follow the requirements of the law;
2. Twice the amount of any finance charge involved, but not less than $100 or more than $1,000; and
3. Court costs and a reasonable fee for your attorney.

Q: *What happens if an error on my bill increases my minimum payment?*

A: You are only responsible for mimimum monthly payments based on the amount that you actually owe.

For example, suppose your total balance one month is $50. You are required to make a minimum monthly payment of $10 for that month. When you get the bill, the creditor has made an error and charged you $250 for chairs that you didn't buy. The creditor believes your new balance is $300 for that month (the $50 you actually owe plus the $250 error).

Minimum payment

New balance:	
$0.01 to $10.00	Balance
$10.01 to $200.00	$10.00
$200.01 to 250.00	15.00
$250.01 to $300.00	20.00
Over $300	(1)

[1] One-tenth of new balance

You must send a letter informing the creditor that you believe an error was made and that you only have to pay the $10 minimum payment for that month based on the actual amount that you owe—$50.

If the creditor determines that there has been no billing error, it may require you to pay the minimum payment amount which you didn't pay because of the dispute. The creditor may not make you pay your entire outstanding balance all at once just because you held back part of your minimum payment during a billing dispute.

Q: *When I make a payment on my account, when does the payment have to be credited to my account?*

A: If you make your payment in the manner specified by the creditor, the payment you make must be credited to your account by the creditor on the day it is received.

For example if a creditor requires that payment be made by check, accompanied by the top of the statement to a certain address, payments made that way must be credited the day they are received.

If a payment is not received in the manner and at the location specified by the creditor, then it must be credited within five days of receipt.

If the creditor does not specify how or where payments must be made, then the creditor must credit the account the day the payment is received, or so that you don't incur a finance charge.

Q: *What if the creditor does not follow those rules?*

A: In the above situation, if the creditor doesn't post your payment in time to avoid charging you a finance charge, late fee, or other charge, it has to adjust your account so that any charges of this type are credited to your account in the next billing period.

If your payment was not credited within five days the creditor would have to adjust your finance charge accordingly.

Q: *If I make a payment that is more than the new balance on my account, and I ask the creditor for a refund of the extra amount, does the creditor have to refund the extra amount to me?*

A: Yes, as long as the extra amount is greater than one dollar, the creditor has to refund the excess no later than seven business days after it receives your *written* request. If you don't ask for a refund of the extra payment, the creditor has a choice—it can either credit your account or refund the amount to you, but if it credits your account, it must still make an effort to return your money to you after six months.

CONSUMER PROBLEMS

The following list of consumer problems is designed to help the reader reach a better understanding of the Fair Credit Billing Act through various consumer situations:

Q: *You ordered a vase to be given as a birthday gift from a department store and charged it to your account. The store delivered it to the wrong address, and too late for the birthday. The charge appears on your next billing statement. Can you dispute this charge?*

A: Yes. Delivery to the wrong address and late delivery are grounds for disputing a billing charge.

Q: *The vase you ordered as a birthday present arrives at the right place on the right day, but it leaks. Can you dispute the charge?*

A: No, not as a billing error. Defective merchandise is not covered by this Act. You do have some rights when purchasing defective items on credit. Those rights are explained on page 10.

Q: *You get your bill for the vase, and instead of charging you $19.99, the department store charged you $99.99. You telephoned and explained the mistake. Is that all that you have to do?*

A: Not to preserve your rights. You must also write a letter explaining the error within 60 days of the date your bill was mailed by the creditor.

Q: *You finally write a letter to the department store explaining the mistake on your bill, but it has been 90 days since you first received the bill. Does it matter how long you wait to write?*

A: Yes, the creditor must receive your letter of dispute within 60 days from the date the creditor mailed you the statement containing the error.

Q: *You write a letter explaining the fact that you were overcharged for the vase and sent it to the local branch of the department store. Are you protected now?*

A: Not necessarily. You must send your letter to the address the department store specifies. That address can be found on the back of your bill. It is important that you follow the correct procedures in a billing dispute so that your rights are protected.

Q: *You have followed all the correct procedures in informing the department store that you have been overcharged for the vase. Does the creditor have to answer your letter?*

A: Yes the creditor must at least acknowledge receipt within 30 days of receiving your letter. In that acknowledgement, the creditor may send a correction notice or inform you why, in the creditor's opinion, no error was made. If you do not receive an acknowledgement to your letter, send the creditor a copy of the original letter within the 60-day period you have to notify the creditor. This will protect your rights.

Q: *You are disputing the charge for the vase. Do you have to pay anything toward the balance on your account?*

A: Yes. You have to continue to pay toward the balance on your account which is not being disputed. For example, if you already owed the store $50 before you bought the vase, you still must pay toward that amount.

Q: *The store claims your minimum payment due is $25 because you have been charged $99.99 for the vase. Do you have to pay that minimum?*

A: No. If the disputed charge raises your minimum payment, you do not have to pay that higher amount. You only have to pay the minimum due on your balance minus the charge for the vase. In this case, if you owed $50 before you purchased the vase, you only have to pay the minimum due on that amount based on the store's repayment schedule.

Q: *You make a payment toward your account at the local branch of the department store. Does that payment have to be credited the day it was received?*

A: No. If you make a payment in any other manner than that specified by the store, usually to the address on the payment envelope, the store has five days in which to credit your account.

Q: *You follow the Fair Credit Billing Act to question a $20 charge on your credit card account. Actually, the charge was properly billed to your account but the creditor ignores your inquiry. Do you have to pay for the charge?*

A: No. The failure of the creditor to comply with the Fair Credit Billing Act and send you a statement that explains why the charge was proper relieves you of the obligation to pay the first $50 in dispute, *even* if the charge was accurate.

BILLING ERROR NOTIFICATION

(Your Address)
(Date)

(Company Name)
Credit Department
Street Address
City, State, Zip Code

Gentlemen:

In my most recent billing statement dated (date), I believe that there is an error. The statement lists a (amount) charge for (item purchased) purchased on (date). I did not make such a purchase. Please check your records again. My account number is (account number), and the account is under the name of (your name).

Thank you for your cooperation.

Sincerely,

(Your Signature)

CHAPTER IV. YOUR CREDIT FILE

Fair Credit Reporting Act

If you apply for a loan and are denied the credit based on something in your credit file which was obtained from a consumer reporting agency, you have a right to know what that unfavorable information is. This chapter will explain your rights under the Fair Credit Reporting Act. It will also explain what a consumer reporting agency is, what your rights are concerning your credit file, and different situations that you may face with regard to your credit report.

Q: *What is a consumer reporting agency?*

A: A consumer reporting agency is a company commonly called a credit bureau. A credit bureau is a business organization which puts together a report about your past credit performance, keeps the information up-to-date, and furnishes the information, for a fee, in the form of consumer reports to merchants, credit card issuers, insurance companies and potential employers.

Q: *Do I have the right to know what is in my credit file?*

A: All consumers have the right to know what is in their credit files at credit bureaus under the Fair Credit Reporting Act.

When you apply for credit or a credit card, one of the first things the merchant or the credit card issuer is likely to do is obtain a credit report about you from a credit bureau. The information contained in the credit report is supposed to help the potential creditor decide whether you are a good credit risk and, therefore, whether to grant you credit.

Q: *What type of information is contained in my credit file?*

A: Your credit file contains several different types of information:

1. Identifying information such as your name, address, and social security number;
2. Information concerning your current employment such as the position you hold, the length of your employment, and your income;
3. Information about your personal history such as your date of birth, the number of dependents you have, your previous addresses and information about your previous employment;
4. Information about your credit history such as how promptly you made payments to previous creditors;
5. Information about you that is available publicly such as records of arrests, indictments, convictions, lawsuits, tax liens, marriage, bankruptcies, and court judgments.

Q: *Who may obtain a copy of my credit file?*

A: Only someone with a legitimate business need may see your credit file. Your credit file may be disclosed only to someone who

the credit bureau believes will use the information for one or more of the following purposes:

1. Granting you credit, reviewing your account, or collecting on your account;
2. Considering you for possible employment;
3. Considering you for an insurance policy;
4. Deciding whether or not you are eligible for a license, or other government related benefits, which by law requires consideration of your financial responsibility or status. A credit bureau may also disclose "identifying" information—limited to your name, address, places of employment, and former places of employment—to a government agency.
5. Furnishing information for a business transaction between you and another person, such as renting an apartment, as long as the person requesting the report has a legitimate business need for the information;
6. Responding to a court order; or
7. Responding to an Internal Revenue Service (IRS) subpoena. The IRS must notify you of the request and give you time to challenge the subpoena.

Your credit file may also be disclosed to someone if you give your written permission to the credit bureau to disclose your file to that person.

Q: *Why should I care about the information in my credit file?*

A: The information contained in your credit file often determines whether or not you will be granted credit. It may also be used by insurance companies to decide whether to insure you or in setting your insurance rate. Occasionally, incorrect information may be entered in your file and if this occurs you would want to have it removed or corrected.

Q: *How can I find out what information is in my credit file?*

A: If you applied for credit and were rejected, or you are denied insurance, or the cost of the insurance is increased based on information contained in a credit report, the creditor denying you credit or insurance is required by law to supply you with the name and address of the credit bureau which supplied the report. (For a sample letter see page 47.)

The credit bureau is required to disclose the information they have about you free of charge, if you ask for the disclosure within 30 days of being notified of your credit or insurance denial. You can get in touch with the credit bureau, either in person, by letter, or by telephone, to learn what is in your credit file. (For a sample letter see page 46.)

If you are simply curious to know what is in your file, you can contact a credit bureau for that information, although in this case you may have to pay the credit bureau a small fee or service charge. You can find the names of credit bureaus in your area by looking in the "Yellow Pages" of your telephone directory under the heading of "Credit Reporting Agencies." If more than one agency is listed, you should contact each one to see if it has your credit report on file.

Q: *How does the credit bureau know that it is really me and not a nosey neighbor when I telephone to find out what is in my file?*

A: The law requires credit bureaus to release your credit file information only upon proper identification. If you personally visit a credit bureau, you will have to provide identification before you will be allowed to know what is in your file. Credit bureaus have also established identification procedures for telephone calls. You must make a written request with proper identification before telephone disclosure is made to you.

For example, if you have been denied credit on the basis of information contained in a credit report, as proper identification the credit bureau may ask you to mail them a copy of the letter refusing you credit along with a telephone number where you can be reached during the day. The credit bureau might send you a form to fill out. If they use this procedure, the bureau will then contact you at the telephone number you supply to tell you what is in your file. Any toll charges for telephone calls must be paid by you.

Q: *What information does the credit bureau have to disclose to me?*

A: Although the law does not give you the right to see your credit file, it does entitle you to know the "nature and substance" of the information in your file. With the exception of medical information, you are entitled to know all the information that is in your file.

In addition, you are entitled to know the names of people or companies which have received your credit report within the last six months. You are also entitled to know who has received your credit report within the last two years for employment purposes.

Q: *If I decide to visit the credit bureau to find out what is in my credit file, may I bring someone with me?*

A: Yes. Under the law you are allowed to bring one other person who should also have identification. The credit bureau may ask you to sign a written statement giving the credit bureau permission to discuss your credit file in the presence of the person who came with you.

Q: *What can I do if I think some of the information in my credit file is incorrect?*

A: If you believe your credit file is incorrect, you should inform the credit bureau that you believe that your file is in error. The credit bureau must then, within a reasonable time period, reinvestigate the matter and record in your file the current status of the information you believe to be in error, unless it has a good reason to believe that the dispute is frivolous or irrelevant. If the credit bureau finds that the information in question was inaccurate, or can no longer be verified, the credit bureau is required by law to promptly correct that information or take it out of your file. (For a sample letter see page 45.)

Q: *What if the information in my file is incomplete?*

A: The law does not require that the credit bureau include all possible information about you in its file. Many credit bureaus, however, are interested in keeping their files complete, and are more than willing to receive information about accounts they are not aware of.

Q: *Can the credit bureau charge me for conducting a reinvestigation?*

A: No. The law prohibits the credit bureau from charging you for a reinvestigation.

Q: *What if the credit bureau reinvestigates the matter, but decides not to change or remove the information from my credit file? What can I do if I still believe the information is wrong?*

A: If the reinvestigation does not resolve the dispute over the information in your credit file, the law permits you to submit a brief statement describing the details of your dispute over the questionable information in your file. The credit bureau may limit the length of your statement to a maximum of 100 words if it helps you to write a clear summary of the dispute. (See a sample statement of dispute on page 43.)

Q: *Why should I file a statement of dispute with the credit bureau if I believe the information in my file is inaccurate?*

A: The advantage of filing a statement of dispute is that it explains your side of the story to anyone who later obtains your credit report. Whenever you file a statement of dispute with a credit bureau, the bureau has to clearly note in any later credit report that contains the disputed information that you believe the information is wrong. It must also include a copy of your dispute statement or a clear and accurate summary of it.

Q: *What can I do if credit reports containing inaccurate information have already been sent out by the credit bureau?*

A: You have the right to require the credit bureau to inform any person(s) you name of a change in your file, or to forward to this person(s) your statement of dispute as long as the person(s) you name has received what you believe to be your inaccurate credit report within the last six months or within the last two years if the report was made for employment purposes.

Q: *May credit bureaus report unfavorable information in my credit file which is outdated?*

A: With the exception of bankruptcies, credit bureaus can only report unfavorable information which is no more than seven years old. Unfavorable information includes items such as past lawsuits, judgments, paid tax liens, unpaid or slowly paid accounts, arrest records, indictments and convictions of crime. Bankruptcies which occurred up to ten years ago may be reported by the credit bureau.

These time limits do not apply if the credit report is to be used in connection with:

1. A credit transaction involving $50,000 or more;
2. Life insurance with a face amount of $50,000 or more; or
3. Employment at an annual salary of $20,000 or more.

Q: *If I have been refused credit or insurance for personal, family, or household purposes, what must the creditor or insurance company tell me about my rejection?*

A: There are two possible situations here:

1. If you were refused credit or insurance on the basis of information contained in a credit report obtained from a credit bureau, the creditor or insurance company must tell you that you were rejected because of some information contained in a credit report, and also give you the name and address of the credit bureau which furnished the report. This requirement also applies if you were denied insurance or employment. To comply with the Equal Credit Opportunity Act (see Chapter

VI), a creditor must also give you the specific reasons why you were denied credit or tell you of your right to request the specific reasons; or

2. If you were refused credit on the basis of information obtained from a person other than a credit bureau relating to your creditworthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or style of living, you have 60 days to write requesting the reasons for credit denial. Other persons supplying information might be other creditors, your employer or your neighbors. The creditor must disclose the nature of the unfavorable information to you within a reasonable period of time. This requirement also applies if your credit application is not denied, but you have to pay a higher rate of interest or a higher price as a result of information obtained from a person other than a credit bureau.

Q: *What if I have not been refused credit or insurance, but do have to pay a higher rate of interest, or a higher premium, because of information contained in a credit report or obtained from a person other than a credit bureau?*

A: If you have to pay more because of information contained in a credit report, you have the same rights as if you had been denied credit or insurance.

Q: *What is an investigative report and how is it different from a credit report?*

A: An investigative report differs from a standard credit report in two ways:

1. It contains a different kind of information and the information is gathered in a different way. While a credit report contains information relating to your credit history and information available from public record, an investigative report deals with matters of a more personal nature such as your character, general reputation, and living style; and

2. The information in an investigative report is obtained by personal interviews with your friends, associates, and neighbors, while information in a credit report is obtained directly from the credit bureau and from public records.

Q: *What are investigative reports used for?*

A: Investigative reports are used mostly by insurance companies and potential employers. Insurance companies use them in helping to decide if you are a good insurance risk. Potential employers may use them to help decide whether they want to hire you. Your current employer may use them to help in promotion decisions.

Q: *Do I have to give my permission before an investigative report can be made about me?*

A: No, but the person who requests an investigative report has three days to notify you that an investigative report has been ordered. (See page 48 for a typical disclosure that an investigative report may be requested.) You have no right, however, to be informed that a report has been ordered if it is to be used for employment purposes for which you have not specifically applied.

Q: *Can I find out what information is in my investigative file?*

A: Yes. You are entitled to know the "nature and substance" of all information in your investigative file. You are not entitled to

know the source of information, if the information was gathered only for use in preparing an investigative report and actually used for no other purpose.

You are also entitled to know who has received investigative reports about you within the past six months, or within the last two years if the report was made for employment purposes. (For a sample letter see page 49.)

Q: *What can I do if a credit bureau or a user of a credit report or investigative report does not follow the provisions of the law? Can I sue?*

A: Yes. If a credit bureau, or a user of information willfully fails to follow any requirements of the Fair Credit Reporting Act in connection with your report(s), they will be liable to you for:

1. Any actual financial injury which you suffer as a result of the failure to follow the law's requirements; plus
2. Any extra penalty which the court sees fit to impose as punishment for intentionally violating the law; plus
3. If you win your case in court, court costs and reasonable fees for your attorney.

If a credit bureau, or user of information is negligent in following the requirements of the law, they will be liable to you for any actual injury you suffer as a result of their failure to follow the law and, if you win your case in court, court costs and reasonable fees for your attorney.

Q: *Does the law provide any penalties for someone who willfully obtains information from a consumer reporting agency under false pretenses?*

A: Yes. Anyone willfully obtaining information from a consumer reporting agency under false pretenses is subject to a maximum criminal fine of $5,000, or a maximum of one year in prison, or both.

Q: *Does the law provide any penalties for officers or employees of consumer reporting agencies who willfully provide information from the agency's files to an unauthorized person?*

A: Yes. The penalties are the same as above, a maximum fine of $5,000, or a maximum of one year in prison, or both.

Q: *If a consumer believes a credit bureau has violated the law, but does not want to sue, can he complain to someone?*

A: Yes. A consumer can file a complaint with the Federal Trade Commission. To file a complaint against someone other than a credit bureau refer to the statutory appendix, page 101 for the appropriate federal agency.

STATEMENT OF DISPUTE

On page 40, the advantages of filing a statement of dispute were explained.

A statement of dispute is simply a listing of the reasons why you believe the information in your credit file is incomplete or inaccurate. The kinds of details that you include will depend on the type of problem you have. The following sample is an illustration of a statement of dispute. You should note that a credit bureau can limit your statement to a length of 100 words if it helps you write a clear summary of the dispute.

In your statement of dispute you should be sure to mention:

1. The information in your file which you believe to be incomplete or inaccurate; and
2. Why you believe the information is incomplete or inaccurate.

SAMPLE STATEMENT OF DISPUTE

I do not believe that my payment record with the ABC Company is listed correctly. I usually pay my bills as soon as I receive them, but never later than two weeks after receipt. The information in my credit file stating that my account with the ABC Company was overdue and had been sent to a collection agency is incorrect. I was never sent a single overdue notice and was always current on this account. I was never contacted by a collection agency in reference to this account. I believe the problem is the result of a clerical error, and should have been corrected long ago.

CONSUMER PROBLEMS

The following list of consumer problems is designed to help the reader reach a better understanding of the Fair Credit Reporting act through various situations which may occur and which would be covered by this law.

Q: *You applied for a charge card and were informed that your application was denied based on information contained in your credit file. What can you do?*

A: The creditor who denied you credit is required to supply you with the name and address of the credit bureau which supplied your credit report. You have 30 days to contact that credit bureau from the time you were notified of your credit denial to find out what is in your credit file.

Q: *You telephone the credit bureau in question and are informed that it will cost $25 to find out what is in your credit file. Is this legal?*

A: No, not if you were denied credit based on information in your file and contacted the credit bureau within 30 days of receiving notification of your credit denial. If you contact the credit bureau after 30 days of receiving your credit denial or are just curious to know what is in your file, you may be charged a fee.

Q: *You call the credit bureau to find out what is in your credit file and are informed that they will not release any information to you without your written permission. Is this allowed by law?*

A: Yes. Credit bureaus can require that you make a written request with proper identification before telephone disclosure is made to you. This identification may include a copy of the letter informing you that you were denied credit plus a telephone number where you may be reached during the day.

Q: *You decide to go to the credit bureau in person and ask to see your file. You are informed that you may not see your credit file. Is this a denial of your rights?*

A: No. The law does not give you the right to actually see your credit file, but it does entitle you to know the nature and substance of the information in your file, with the exception of medical information.

Q: *You are informed of the information in your credit file and one item is obviously incorrect. What can you do?*

A: You can inform the credit bureau that you believe information in your file is incorrect. The credit bureau must reinvestigate that item within a reasonable amount of time. If there is a mistake, the credit bureau is required by law to take the incorrect information out of your credit file.

Q: *You find out what is in your credit file and realize that the information is incomplete. Does the credit bureau have to put in your file all the information you believe should be there?*

A: No. The law does not require credit bureaus to include all possible information about you. Most credit bureaus, however, are interested in keeping their files as complete as possible and would be happy to receive additional relevant information.

Q: *You ask the credit bureau to reinvestigate an item in your credit file and are informed that there is a $20 reinvestigation fee. Is this allowed by law?*

A: No. The law prohibits credit bureaus from charging you for a reinvestigation.

Q: *The credit bureau reinvestigates the item you believe is wron; and decides not to remove it from your file. What can you do?*

A: If you still believe there is a mistake in your file, you may write a brief statement explaining your side of the story. Your statement or an accurate summary of it, must then be included as information in your credit file when it is forwarded to potential creditors. You may also request that your statement be forwarded to anyone who has received your credit file in the last six months, or the last two years if your file was used for employment purposes.

Q: *You had some finanical hard times ten years ago and were delinquent on some of your bills. Can this information still be kept in yor credit file?*

A: No. With certain exceptions, unfavorable information can only be kept in your credit file for seven years. For exceptions see page 40.

Q: *If a credit bureau violates my rights under this law, may I sue?*

A: Yes, for a credit bureau's legal liabilities under the Fair Credit Reporting Act see page 42.

CONSUMER LETTER REQUESTING A REINVESTIGATION

OF AN ITEM OF INFORMATION CONTAINED IN CREDIT FILE

(Your Address)
(Date)

(Credit Bureau)
Street Address
City, State, Zip Code

Gentlemen:

I recently spoke on the telephone with (Name) of your agency, and he provided me with the information in my credit file. There is one item of information which I believe is incorrect and I would like to have you reinvestigate it, and correct it.

The item is my account with (Company Name), (your account number). You have listed in my file that (Company Name) reported that my account had been referred for collection because of delinquency in payment. I have always paid my account with (Company Name) promptly and have never had any problems with this account. Since this item in my credit file is obviously a mistake, I would appreciate it if you would make a correction as soon as possible.

Sincerely,

(Your Signature)

CONSUMER LETTER REQUESTING A REINVESTIGATION

OF AN ITEM OF INFORMATION CONTAINED IN CREDIT FILE

(Your Address)
(Date)

(Credit Bureau)
Street Address
City, State, Zip Code

Gentlemen:

I was recently refused credit by the (Company) based on a credit report made by your agency. I would like to know what information is in my credit file and would appreciate your telephoning me to provide this information.

I can be reached during the day at (your telephone number). I am enclosing a copy of the letter which I received from (Company) for identification purposes.

Sincerely,

(Your Signature)

Enclosure

LETTER DENYING CREDIT

Dear Customer:

Thank you for your recent credit application. We have reviewed it very carefully and regret to inform you that we are unable to extend credit to you at this time. We hope you will continue to shop at our store on a cash basis.

Our decision on your application was based on information obtained in a report from the following consumer reporting agency:

Rapidreport Credit Bureau
4621 Paper Avenue
Creditville, Anystate 12345

You have the right to request and receive from us a statement of reasons for our decision regarding your application if we receive the request within 60 days of your receiving this letter.

If you do so we will furnish the statement of reason within 30 days of receiving your request.

The Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract) because all or part of the applicant's income is derived from any public assistance program or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with this law concerning this creditor is:

Federal Trade Commission
Equal Credit Opportunity
Washington, D.C. 20580

Sincerely,

Credit Department

TYPICAL DISCLOSURE THAT AN INVESTIGATIVE REPORT MAY BE REQUESTED

This is to inform you that as part of our procedure for processing your (initial insurance) (renewal insurance) (credit) (employment) application an investigative consumer report may be prepared whereby information is obtained through personal interviews with you neighbors, friends, or others with whom you are acquainted. This inquiry includes information as to your character, general reputation, personal characteristics and mode of living. You have the right to make a written request within a reasonable period of time to receive additional, detailed information about the nature and scope of this investigation.

LETTER REQUESTING INFORMATION ABOUT AN INVESTIGATIVE REPORT

(Your Address)
(Date)

(Company Name)
Street Address
City, State, Zip Code

Gentlemen:

Recently, I received notice from you that you had requested that a Credit Bureau prepare an investigative consumer report about me. I would appreciate it if, as required by the Fair Credit Reporting Act, you would disclose to me in writing additional detailed information about the nature and scope of this investigative report.

Thank you for your cooperation.

Sincerely,

(Your Signature)

CHAPTER V. RENTING CONSUMER GOODS

Consumer Leasing Act

In recent years there has been an increase in the leasing of cars and other durable goods by consumers. In response to this upsurge in leasing, Congress passed the Consumer Leasing Act in 1976 to provide consumers with information about the true cost and terms of consumer leases. The Act has several purposes:

1. To allow consumers to compare the cost of various leases available to them;
2. To allow consumers to compare the cost of leasing an item with the cost of buying it on credit;
3. To make sure that lease terms are accurately and meaningfully disclosed in advertisements; and
4. To limit balloon payments (see page 53 for information on balloon payments).

Q: *Why would I want to lease a car, furniture, or other items rather than making an outright purchase?*

A: There are several possible reasons. You may want to use the property for only a limited period of time. You may also find that your monthly payments on a leased item are lower than monthly payments if you bought the item on credit. In the case of automobiles, your lease agreement may provide that the person (or company) leasing the car to you is responsible for servicing and maintaining the car. In the case of furniture, you may find it more convenient to lease if you move frequently and want to avoid the expense and trouble of moving furniture. You should remember, however, that in the case of a consumer lease, you have to make monthly payments and perhaps a large lump sum payment at the end of the lease called a balloon payment, and then return the item. If you purchased the item on credit and made monthly payments the item would eventually belong to you.

Q: *What is consumer lease?*

A: It is a contract for the leasing, or renting, of goods. The consumer who leases the goods (lessee) is allowed to use them for a certain period of time and for a certain price, while the company renting the goods to you (lessor), retains ownership of the items. There are two types of leases: open end and closed end.

Q: *What is an open end lease?*

A: In an open end lease the consumer and the lessor estimate the value the leased items will have at the end of the lease term. When the lease expires and the items are returned, if the value of those items is less than the original estimate, the consumer is responsible for the difference. This is known as a balloon payment. For example, you lease a car and the estimated value of the car at the end of the lease term is $3,000. When you actually return the car, the value is estimated at $2,500. You are then responsible for the

$500 difference. The balloon payment in this situation would be $500.

Q: *What is a closed end lease?*

A: This is a lease in which the consumer has no obligation to the lessor for changes in the value of the property when the property is returned at the end of the lease term.

Q: *What are the differences in cost between the two types of leases?*

A: Closed end leases usually have higher monthly payments than open end leases, but closed end leases do not have balloon payments. Balloon payments could add significantly to the cost of leased goods.

Q: *Are all leases covered by the Consumer Leasing Act?*

A: No. To be covered by the Act a lease must:

1. Be for longer than four months;
2. Involve an obligation of less than $25,000;
3. Be for goods that are used for personal, family or household purposes.

Q: *If I lease furniture for five months under a month to month lease, is the lease covered by the Act?*

A: No. Leases of four months or less that can be cancelled without penalty are not covered, even if you extend them beyond four months.

Q: *Why is it important to read a lease before I sign it?*

A: A lease is a contract. As with any contract, you should read it closely to find out your rights and obligations. The Consumer Leasing Act requires the disclosure of the important items of information in a lease so that you can decide whether or not the lease is favorable to you. By reading the terms of the lease, you should be able to compare one lease with another, in order to choose which is most advantageous to you as well as whether you would be better off buying or leasing a particular item.

Q: *What is the leasing company required to tell me about the costs of a lease?*

A: Under the Act the leasing company must tell you:

1. The amount of any advance payment you must make and any security deposit (see #3 on the sample lease form found on page 56);
2. The regular payment (#4) and the schedule of payments (#5) as well as the total amount of those payments (#6);
3. Your total obligation (#11);
4. The leasing company must also tell you what other charges, such as maintenance (#4(b) and 7), taxes (#8) and insurance (#9) you must pay.

Q: *What else will the disclosure tell me about the terms of the lease?*

A: The disclosure statement will also explain about your rights and obligations during the term of the lease. You will learn:

1. What insurance you must have (#9);
2. What is considered normal wear and use (#15);
3. Who must do what maintenance (#16);
4. What warranties cover the goods (#17);
5. What are the charges for late payments (#20).

Q: *What if I want to terminate the lease early?*

A: The disclosure form will tell you the conditions under which you may terminate the lease and what charges may be involved (#18).

Q: *What information must be contained in advertisements of consumer lease?*

A: If an advertisement of a consumer lease mentions the amount of any payment, the number of required payments, or that any or no downpayment is required at the beginning of the lease, the advertisement must clearly and conspicuously include the following items of information:

1. The fact that the transaction being advertised is a lease;
2. The amount of money you will be required to pay at the start of the lease or a statement that no such payment is required;
3. The number of payments there will be, their amounts, the schedule of payments, and the total amount of payment due under the lease;
4. The fact that the person leasing the property will be responsible for the difference between the anticipated fair market value of the leased property and its actual appraised value at the end of the lease, if the person leasing the property will be responsible for this difference in the lease;
5. The amount, or method used to determine the amount, of any liabilities which the lease imposes at the end of the term upon person leasing the property;
6. Whether or not the person leasing the property has the option to purchase the leased property, and at what price and time.

Q: *Does the Consumer Leasing Act put any restrictions on the use of balloon payments.*

A: Yes: The Consumer Leasing Act assumes that it is unreasonable for you to have to make a payment at the end of the lease that is more than three times your average monthly payment. For example, if your average monthly payment on a car lease is $140, the Consumer Leasing Act would assume that anything over three times this amount ($3 \times 140 = \$420$) would be unreasonable. If the lessor in this instance wanted to collect an amount more than $420, he would have to take you to court and show that his original estimate of the value of the property was a reasonable, good faith estimate of the anticipated actual fair market value of the property at the end of the lease. If the lessor does take you to court in this situation, he must pay for your reasonable attorney's fees, whether he wins or loses his case.

Q: *What can I do if I believe that the amount that I owe at the end of the lease is too much?*

A: If the amount you owe at the end of the lease seems too high you can pay to have an independent appraiser estimate the value of the leased property. Both you and the lessor must agree on the particular appraiser. The appraiser's decision concerning the value of the leased property is final. The law requires his decision to be accepted by both you and the lessor.

Q: *Do these restrictions on the amount of money I may owe at the end of the lease apply to all lease agreements?*

A: No. The limit of three times over the amount of the average monthly payment does not apply to any amount in the balloon payment which is a result of physical damage to the property beyond reasonable wear and use, or as a result of excessive use. The Consumer Leasing Act also will not prevent you from making a final settlement concerning the amount of excess liability at the end of the lease, as long as the settlement is agreeable to both you and the lessor.

Q: *May the lessor charge a fee for delinquency, default, or early termination of the lease?*

A: Yes. These fees, or the method use to calculate them, must be listed in the disclosure statement (#18 and #20). Their amounts must be reasonable in light of the anticipated or actual harm caused by the delinquency, default, or early termination.

Q: *Can I sue if the lessor does not follow the requirements of the law?*

A: Yes. You can sue a lessor for damages if the lessor fails to make the disclosures required by the law, or if he collects a balloon payment of more than three times the amount of your average monthly payment without first having sued you and won the case in court. If you win your case in court, you are entitled to receive:

1. The amount of any actual financial damage which you suffered as a result of the lessor's failure to comply with the law; plus
2. Twenty-five percent of the total amount of monthly payments under the lease (at least $100 must be awarded to you and you may not receive more than $1,000); plus,
3. Court costs and a reasonable fee for your attorney.

If you suffer actual financial damages because of a failure on the part of a lessor to include information in a consumer leasing advertisement as required by law, you are entitled to receive the same three items of compensation listed above.

Q: *Is there any limitation on when I can sue?*

A: Yes. You must sue within one year from the termination date of the lease agreement.

CONSUMER PROBLEMS

The following list of consumer problems is designed to help the reader reach a better understanding of the Consumer Leasing Act through situations which may occur while leasing an item.

Q: *You may want to lease a car. You see an advertisement which states that you may lease the type of car you want for $100 a month. Is that all the advertisement must tell you about the lease?*

A: No. If the advertisement states the amount of the monthly payment, the number of payments required, or any downpayment that is required, it must also state a number of other things. For a complete list see page 53.

Q: *You lease a car and it breaks down. Are you responsible for the repair?*

A: You may be. It must be specified in your lease agreement who is responsible for maintenence of the property.

Q: *You lease a car for a year at $100 per month, but want to turn it in after nine months. May the lessor charge you for returning the mechandise early?*

A: Yes, but that fact must be in your lease agreement.

Q: *You return the car after one year and the lessor states that you owe an additonal $400. Can the lessor charge you that much?*

A: No, not unless there has been unreasonable wear on the car involved. The lessor under this law can only charge up to three times the amount of your monthly payment at the end of the lease term or $300, and only if you have an open end lease. If the lessor wanted to collect $400 from you, he would have to take you to court.

Q: *The lessor of your car decides to take you to court to collect the $400 and he wins the case. Can you send the lessor the bill for your attorney's fees?*

A: Yes, as long as they are reasonable.

Q: *What if you believe that $400 is too high an amount to pay for the condition of the car when you returned it. Do you have to go to court?*

A: No. If both you and the lessor agree on an independent appraiser to estimate the value of the car, his decision is final and must be accepted by both you and the lessor.

Q: *What if the lessor does not make the disclosures required by this law. Can you sue?*

A: Yes, you can sue. The damages which you are entitled to are listed on page 54.

Q: *You leased your car for one year, but it was on a month to month basis. Are you protected by this law?*

A: No. Only leases which run longer than four months are covered. If you have a month to month lease and extend it beyond four months, you still are not covered by this Act.

Q: *You returned your car 18 months ago and you believe you were overcharged at the end of the lease term. You finally decide to sue. Can you sue the lessor now?*

A: No. You must sue within a year from the termination of the lease agreement.

Q: *You have a closed end lease and return the car in good condition after one year. The lessor wants to charge you $400. Can this be done?*

A: No. Under a closed end lease you have no obligation after the lease expires.

Date _____

These disclosures are provided pursuant to the Federal Consumer Leasing Act.

1. LESSOR(S) _____ LESSEE(S) _____

2. Description of leased property

Year	Make	Model	Body Style	Vehicle ID #

3. (a) Initial Charges, consisting of
☐ Capitalized Cost Reduction ☐ Trade-in Allowance ☐ _____ $ _____

(b) Other Charges Payable at Inception, consisting of
☐ Advance Monthly Payment of _____ $ _____
☐ Refundable Security Deposit ☐ Delivery Charge
☐ Registration Fees ☐ _____ $ _____

Total Payment Due at Inception: $ _____

4. (a) Basic Monthly Payment: $ _____

(b) Other Charges Payable Monthly:
☐ Maintenance ☐ Registration Fees
☐ Insurance ☐ _____ $ _____

Total Monthly Payment: $ _____

5. Term of this lease: _____
The first monthly payment of $ _____ is due on _____; _____ subsequent payments of $ _____ on the _____ of each month thereafter. $ _____

6. Total of Basic Monthly Payments: $ _____

7. Total of Other Charges Payable to Lessor:
☐ Disposition $ _____ ☐ Maintenance $ _____
☐ _____ $ _____ $ _____

8. Fees and Taxes
Total amount you will pay during the term for official fees, registration, certificate of title, license fees and taxes. $ _____

9. Insurance
The following types and amounts of insurance will be acquired in connection with this lease: _____
☐ We (lessor) will provide the insurance coverage quoted above for a total premium cost of $ _____
☐ You (lessee) agree to provide insurance coverage in the amounts and types indicated above. $ _____

10. Estimated _____ value of the vehicle at the end of the lease term: $ _____
(Your liability for this sum may be limited. See Item 14.) $ _____

11. Total Lease Obligation:
(Items 3(a), 6 and 10.) $ _____

12. Initial Value of Vehicle: $ _____

13. Difference:
(Item 11 less Item 12.) $ _____

14. End of Term Liability
(a) The estimated value of the vehicle stated as Item 10 is based on a reasonable, good faith estimate of the value of the vehicle at the end of the lease term. If the actual value of the vehicle at that time is greater than the estimated value, you will have no further liability under this lease, except for other charges already incurred (and are entitled to a credit or refund of any surplus).
If the actual value of the vehicle is less than the estimated value, you will be liable for any difference up to $ _____ (3 times Item 4(a)). For any difference in excess of that amount, you will be liable only if
1. Excessive use or damage (as described in Item 16) (representing more than normal wear and tear) resulted in an unreasonably low value at the end of the term.
2. You voluntarily agree with us after the end of the lease term to make a higher payment.
3. The matter is not otherwise resolved and we win a lawsuit against you seeking a higher payment.

Should we bring a lawsuit against you, we must prove that our original estimate of the value of the leased property at the end of the lease term was reasonable and was made in good faith. For example, we might prove that the actual value was less than the original estimated value, although the original estimate was reasonable, because of an unanticipated decline in value for that type of vehicle.

Unless we prove that the excess amount owed was the result of excessive use or unreasonable wear and tear, we will pay your reasonable attorney's fees.

(b) If you disagree with the value we assign to the vehicle, you may obtain, at your own expense, from an independent third party agreeable to both of us, a professional appraisal of the _____ value of the leased vehicle which could be realized at sale. The appraised value shall then be used as the actual value.

16. Standards for Wear and Use
The following standards are applicable for determining unreasonable or excessive wear and use of the leased vehicle: _____

17. Maintenance
[You are responsible for the following maintenance and servicing of the leased vehicle: _____

(We are responsible for the following maintenance and servicing of the leased vehicle: _____.]

18. Warranties
The leased vehicle is subject to the following express warranties: _____

19. Early Termination and Default
(a) You may terminate this lease before the end of the lease term under the following conditions: _____

The charge for such early termination is _____.

(b) We may terminate this lease before the end of the lease term under the following conditions: _____

Upon such termination we shall be entitled to the following charge(s) for _____

(c) To the extent these charges take into account the value of the vehicle at the end of the lease term, you have the same right to a professional appraisal as that stated in Item 14(b).

20. Security Interest
We reserve a security interest of the following type in the property listed below to secure performance of your obligations under this lease: _____

21. Late Payments
The charge for late payments is _____

22. Option to Purchase
[You have an option to purchase the leased vehicle at the following times: _____

If at the end of the term, the price will be $ _____.
If prior to the end of the term, the price will be $ _____

[You have no option to purchase the leased vehicle.]

CHAPTER VI. DENIAL OF CREDIT

Equal Credit Opportunity Act

If you apply for credit, meet the standards which have been discussed thus far, and are still rejected, you may have been discriminated against. This would be a violation of Federal law.

Under the Equal Credit Opportunity Act, a creditor is forbidden to deny credit based on certain reasons. Reasons that cannot be used as a basis for credit denial are: sex, marital status, race, color, religion, ages (as long as you are legally old enough to enter into a contract), national origin, because you receive all or part of your income through a public assistance program, and because you have exercised in good faith any right under the Consumer Credit Protection Act.

This law also gives you the right to obtain in writing a statement of the specific reasons for a credit denial by any creditor who denies you credit.

Q: *What is the purpose of the Equal Credit Opportunity Act?*

A: The Equal Credit Opportunity Act was enacted to ensure that when you apply for credit, your application will be considered on your "creditworthiness", and not on factors unrelated to your ability to repay.

Q. *What is creditworthiness?*

A: Creditworthiness is the creditor's belief that a particular account will be paid in a satisfactory manner. It reflects a belief by the creditor that the credit applicant is both able and willing to repay the credit. The same consumer may be considered creditworthy by one creditor and not creditworthy by a second creditor. It is not an absolute judgment, but varies with the consumer's situation, the creditor, and even the current economic climate.

Q: *How is a credit application evaluated?*

A: There are two methods used, judgmental systems and credit scoring systems. Some creditors use a combination of the two.

Q: *What is a judgmental system?*

A: A judgmental system is a system by which a creditor evaluates each application individually. In addition to objective factors, such as income and credit history, the creditor may also consider special circumstances affecting the particular credit applicant. In short, he uses his own judgment when extending credit.

Q: *What is a credit scoring system?*

A: A credit scoring system is a system which evaluates, on the basis of a numerical score, a credit applicant's probable creditworthiness. The score is based on an applicant's answer to questions which have been mathematically selected and weighed according to the creditor's experience with past applicants.

Q: *What factors do credit scoring systems consider?*

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A: Each system is different. The most commonly scored factors are time with present employer, whether you own or rent your home, whether you have checking or savings accounts, the number of years you have lived at your present address, and your credit history.

Q: *What would the length of time of my employment have to do with my creditworthiness?*

A: Facts like length of employment do not cause you to be a good or bad credit risk. Creditors have found, however, that there is a relationship between these types of facts and the odds that an account will be paid in a satisfactory manner. Creditors use this relationship, or correlation, to help decide whether to grant or deny credit based on the creditor's past experiences. For example, a creditor may have found that people who have a steady employment record pay their bills more regularly than people who have had many jobs in a short amount of time.

Q: *What good does it do to know that the length of time on my job was the reason for my being denied credit? I cannot change that fact.*

A: Some creditors permit their credit scoring system to be overridden by people who work in their credit department. Knowing what factors led to your credit denial gives you an opportunity to explain the reasons for them in person. Your explanation might convince the creditor to override its credit scoring system and grant you credit based on your personal explanation.

In addition, knowing what factors led to your credit denial may help you to correct the situation so that you may be approved for credit in the future. For example, if you were denied credit because of excessive financial obligations, you will know that you will have to lower the amount of your outstanding debts before applying for credit again.

Q: *What is considered a "public assistance program" for the purposes of the Equal Credit Opportunity Act?*

A: A public assistance program is any governmental assistance program that provides direct, continuing, or regular income to an individual. It includes Aid to Families with Dependent Children (AFDC), food stamps, rent and mortgage assistance programs, Social Security and Supplemental Security Income (SSI), and unemployment compensation.

Q: *Can I be denied credit just because I receive income from a public assistance program?*

A: No. As long as you meet the creditor's standards for creditworthiness, you cannot be denied credit solely because you receive income from a public assistance program. If you are receiving income from a public assistance program, the creditor may consider the length of time you have been receiving such income, the amount of such income, whether you intend to continue to live in the same area in order to meet the residency requirements for benefits, and the status, for example age, of your dependents to determine whether the benefits which you are currently receiving will continue in the future.

Q: *If a creditor refuses to grant me credit, what sort of notification is required to be given?*

A: The creditor must provide you with a written notice which contains:

1. A statement of the action that has been taken in connection with your application, for example, that you have not been granted credit;

2. A statement similar to the following: The Equal Credit Opportunity Act prohibits creditors from discriminating against credit applicants on the basis of race, color, religion, national origin, sex, marital status, age (provided that the applicant has the capacity to enter into a binding contract), because all or part of the applicants income derives from any public assistance program, or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act;

3. The name and address of the Federal agency that has jurisdiction over the creditor giving the notification;

4. A written statement explaining the reasons for the action taken, or a notice that you have 60 days to request such a statement, and that the creditor must respond to you within 30 days after receiving such a request. This notice must contain the name, address, and telephone number of the person or office from which you may obtain a statement explaining the reasons for whatever action was taken; and

5. The name and address of any credit bureau which furnished a credit report that contained information that the creditor used to deny you credit. (See Chapter IV for more information on credit bureaus).

Q: *Are there any other times when the creditor must notify me of actions taken with regard to my credit application or account?*

A: Yes. In addition to the case where a creditor denies you credit in substantially the same amount or terms you requested, a creditor must also notify you, and provide a statement of reasons for the actions taken, whenever the creditor:

1. Offers you credit which is not basically the same amount or on basically the same terms that you requested, and you do not use the credit or inform him that you have accepted it. For example, if you requested a credit line of $700 and the creditor will only authorize a credit line of $400; or

2. Closes your credit account or makes unfavorable changes in the terms of your account which do not affect all or most of the creditor's accounts which are similar to yours; or

3. Refuses to increase the amount of credit available to you when you apply for the increase according to the procedures the creditor has established for the type of credit you want.

Q: *May a creditor provide me with an oral, rather than written, statement of reasons for not granting credit?*

A: Not usually, but there are exceptions. If a creditor received 150 or less credit applications in the previous calendar year, he is allowed to provide all notifications to credit applicants, including statements of reasons, orally.

Q: *Why are the reasons for denial of credit important to me?*

A: The reasons for denial of credit are an important way of checking to see if you have been discriminated against. If a creditor denies credit to you because of your sex, but gives you the false

reason of "low income" and you have an income of $50,000, it is possible that the creditor has violated the law.

Also, once you know the reason(s) why you have been denied credit, you may be able to correct the situation. For example, if a creditor is unable to verify your employment, and lets you know that this is the reason why he did not approve your credit application, you can have your employer write a letter to the creditor stating that you are his or her employee. In addition, knowing the reasons for credit denial may help you determine if there is inaccurate or incomplete information in your credit file, you can then take action to correct the information as described in Chapter IV.

Q: *When I apply for credit, can a creditor simply tell me that I was refused credit based on internal standards or that I failed to obtain a high enough score on a credit scoring system?*

A: No. A creditor is required to supply you with a specific reason(s) for denying you credit. The two reasons listed above are not specific enough, so if a creditor uses them he must also state a more specific reason.

Q: *Can a creditor ask for information about my spouse or former spouse when I apply for credit?*

A: Yes, but only under certain circumstances. The creditor can ask for information about your spouse or former spouse only when:

1. Your spouse will be permitted to use the account;
2. Your spouse will be contractually liable on the account;
3. You are relying on your spouse's income as a basis for repayment of the credit;
4. You live in a community property State, or you are relying on property located in a community property State, as a basis for repayment of the credit;
5. You are relying on alimony, child support, or separate maintenance payments from a spouse or former spouse as a basis for repayment of the credit.

Q: *May a creditor ask about my marital status when I apply for credit in my own name and I don't use my personal property as security?*

A: No. When you apply for an individual, unsecured credit account, the creditor may not ask about your marital status unless you live in a community property State, or rely on property located in a community property State as a basis for repayment of the credit you requested.

Q: *What is a community property State?*

A: A community property State is any State which has laws stating that all property during a marriage is held in a form of joint ownership known as "community property". This type of ownership means that both spouses share the ownership of the property.

Q: *What States are community property States?*

A: Arizona, California, Idaho, Louisiana, Nevada, New Mexico, Texas, and Washington are the community property States.

Q: *May a creditor ask about my marital status at any other time?*

A: Yes, you may be asked about your marital status when you apply for a home mortgage, but you are not required to answer questions about your marital status in this case. This information is being collected to see if the creditor is complying with this law, and not practicing discrimination when issuing credit.

Q: *May a creditor ask me about my race, color, religion, or national origin?*

A: Yes, in some cases, but the information is being collected only to confirm that the creditor is complying with the law. The information cannot be used in evaluating your "creditworthiness". When you apply for a home mortgage, and the credit is secured by a lien on the property, the creditor must request information about your race/national origin. You do not have to supply the information, however; and failure to do so will not affect your credit application. Again, this information is only being collected to confirm that the creditor is complying with the law.

Q: *May a creditor ask about my permanent residence or immigration status?*

A: Yes.

Q: *May a creditor consider my permanent residency or immigration status in deciding whether or not to grant me credit?*

A: Yes.

Q: *In deciding to grant me credit, is the creditor required to consider my income from part-time employment?*

A: Creditors are not required to consider income at all. If a creditor does consider income then the creditor must consider your income from part-time employment. Like all types of income, however, the creditor may consider the amount of the income, the stability of your employment and the reliability of receipt, when determining your creditworthiness.

Q: *If I receive alimony, child support, or separate maintenance payments, does the creditor have to consider these payments as income when I apply for credit?*

A: If the creditor considers income as a factor in deciding to grant credit, the creditor must consider these payments as long as they are likely to be made on a regular basis.

Q: *How does a creditor decide whether such payments are likely to be made regularly?*

A: He will consider factors such as:

1. Whether the payments are required to be made by a written agreement or court order;
2. How long you have been receiving the payments;
3. How regularly you have been receiving the payments thus far;
4. Whether there are any legal procedures available to compel payments; and
5. The creditworthiness of the person making the payments.

Q: *May a creditor ask if any income listed on my credit application is alimony, child support, or separate maintenance payments?*

A: Yes. A creditor may ask for this information, but only if he first tells you that you don't have to declare such income if you don't want it considered in deciding your creditworthiness.

Q: *May a creditor ask what my sex is?*

A: No. You may be requested to choose a title on the application form (Ms., Miss, Mrs., or Mr.) but only if the form first tells you that selecting a title is optional. If you apply for a home mortgage, you also may be asked your sex for the purpose of monitoring compliance with the law, but you are not required to supply this information.

Q: *May a creditor ask for information about my plans to have children?*

A: No. But a creditor may ask you about the number and ages of the dependents you currently have, or about the financial obligations and expenses you have in relation to those dependents.

Q: *When I apply for a credit account in my own name, does a creditor have to take into consideration the credit history of joint accounts I share with my spouse?*

A: Yes, a creditor must consider the credit history of these joint accounts if the creditor uses credit history as a means of evaluating the creditworthiness of other applicants with qualifications similar to yours, and who are applying for a similar type and amount of credit.

Q: *Must a creditor consider information which I submit indicating that the credit history used is not an accurate reflection of my creditworthiness?*

A: Yes, a creditor must consider such information if credit history is a factor used in evaluating the creditworthiness of other applicants who have qualifications similar to yours, and who are applying for a similar type and amount of credit.

If you believe that information contained in your credit history is inaccurate or would mislead the creditor as to your creditworthiness, you should inform the creditor of any other information which is available to set the record straight. Under these circumstances, the creditor will have to consider the information you supply when determining whether or not you are eligible for credit. (See Chapter IV for information on how to clear up inaccurate or misleading information contained in your credit file.)

Q: *When must a creditor consider a credit account listed in my spouse's or former spouse's name?*

A: A creditor must consider these accounts if:

1. The creditor takes the credit history into account when evaluating the creditworthiness of other applicants who have qualifications similar to yours, and who are applying for a similar type and amount of credit; and,
2. You can demonstrate that the account accurately reflects your creditworthiness.

For example, suppose your spouse had a credit account with a department store. You made purchases there for yourself and your family and charged them to your spouse's account. You then helped to pay off the department store bills. In this case, even though the account was in your spouse's name, you should inform the creditor of your help in paying the account, and request the creditor to consider this when evaluating your creditworthiness.

Q: *If I am married, may I hold a credit account in my maiden name, or a combination of my maiden name and married name?*

A: Yes. The law requires creditors to permit you to hold your credit acccount in one of several possible forms.

If, for example, you were born "Linda Jackson" and later married "John Moore", the creditor would have to list your account in any of the following ways, depending on your preference:

Linda Jackson (your maiden name alone as you last name);
Linda Moore (your married name as your last name);

Linda Jackson Moore (your maiden name and your married name).

Q: *Can a creditor require me to reapply for an account, change the terms of my account, or close my account on the basis of my reaching a certain age, retiring, or changing my name or marital status?*

A: No. As long as you are liable for payment on an account that is already open, and there is no evidence that you are unable, or unwilling to pay on your account, a creditor cannot take any of the above actions for any of the reasons listed.

Q: *Are there any times when a creditor is permitted to require me to reapply for a credit account when my name or marital status changes?*

A: Yes. A creditor may require you to reapply for credit if you were originally granted credit based on the income earned by your spouse, and your individual income would not be enough to support the amount of credit originally extended to you.

Q: *If I qualify on my own for the amount and terms of credit I requested, may a creditor require my spouse to sign any credit agreement?*

A: No, a creditor may not require your spouse to sign except in two situations:

1. When you apply for individual, secured credit and your spouse either has, or will have, an interest in the property you are offering as security. Here the creditor may require your spouse's signature on any legal document that is needed to make the property available to the creditor in the event you cannot repay your debt; or

2. If you live in a community property State or rely on property located in such a State, the creditor may require your spouse's signature on any legal document that is needed to make the property available to him to cover the money you owe if;

   a. State law does not give you the power to control enough community property to qualify for the amount of credit you want; or

   b. You do not have enough property in your own name for the amount of credit you requested.

Q: *If a co-signer is needed to back up my account so that I may obtain the amount of credit I want, may the creditor require that it be my spouse?*

A: No. The creditor may ask you to find someone to be personally liable for your account, but cannot require that it be your spouse.

Q: *What is the advantage of having a credit account reported to consumer reporting agencies in both my name and my spouse's name?*

A: The advantage is that you will both build a credit history which will be valuable when you want to obtain credit in the future. In the past, many women who became widowed or divorced had trouble in obtaining credit on their own because the family credit history had been in only their husbands' names. Without a credit history, creditors were reluctant to grant credit to women in these situations even though they may have helped to pay the bills while they were married.

Q: *If my spouse has a credit account with a company, and the account is in my spouse's name but I use it too, when that company makes reports to consumer reporting agencies (credit bureaus), is the information about this account listed in my name, in my spouse's name, or in both our names?*

A: For every credit account opened creditors have to determine if the account is one that the applicant's spouse is permitted to use, or if it is one for which both spouses are primarily liable (joint accounts).

In either of these situations, the creditor has to note that both spouses participate in the account. The creditor is required, when providing consumer reporting agencies information on the account, to have the account information accessible under the name of each spouse. The creditor is also required to report information concerning the account to recipients other than consumer reporting agencies in the name of the spouse about whom such information is requested.

Q: *Can I get help from the Government if I think I am being discriminated against?*

A: Yes. Several Federal agencies are responsible for making sure that the Equal Credit Opportunity Act is enforced, and may be able to help you. When you are denied credit, the creditor who denies you credit is required to furnish you with the name and address of the Federal agency which is charged with enforcing the Equal Credit Opportunity Act with respect to that creditor.

Q: *Can I sue a creditor if he violates the Equal Credit Opportunity Act?*

A: Yes. If you have suffered any actual damages as a result of a creditor's failure to comply with any requirements of the law, the creditor will be liable for those damages. In addition, any creditor other than a government of governmental subdivision who fails to comply with any requirement imposed by the law will be liable for punitive damage up to a maximum of $10,000 in addition to any actual damages you have suffered. If you win your case in court, you will also be reimbursed for court costs and reasonable attorney's fees as determined by the court.

Q: *Are there any time limits on when I can sue?*

A: Yes. As a general rule, you should file your case no later than two years from the date on which the violation occurred. If any agency which has responsibility for administrative enforcement of the law began a related enforcement action within two years after the date on which the violation occurred, you may sue up to one year after the proceeding began. There is also a similar one-year extension period whenever the Attorney General begins a related civil lawsuit within two years after the date on which the violation occurred.

CONSUMER PROBLEMS

The following list of consumer problems is designed to help the reader reach a better understanding of the Equal Credit Opportunity Act through various consumer situations which may occur and which would be covered by this law.

Q: *You are a recently divorced woman who earns $25,000 per year and also receive child support from your former spouse. You apply for a department store charge card in your own name and are turned down. What can you do to find out why you were denied credit?*

A. With the notice that you have been denied credit, you *must* also receive a written statement explaining why you were turned down, or notice that you have 60 days to request such a statement. When you receive such a notice, you have 30 days to request the specific reasons for denial of your application.

Q: *You receive notice that your income is not high enough for the credit you requested. Is this a violation of the law?*

A: No, not if all other applicants who make the same amount of money that you do have been denied the same type of credit for the same reason.

Q: *The creditor in this case did not take into account that you receive child support payments. Is this a violation?*

A: If you requested such payments to be considered as part of your income, and those payments are made on a regular basis, then the creditor must consider them in evaluating your credit application.

Q: *When you were married, your joint income was $50,000. You receive notice from the creditor that your credit limit has been lowered after your divorce. Is this a violation?*

A: No, a creditor may lower the amount of credit which you are allowed if your current income is not enough to support your current credit limit. The creditor must send you a written notice explaining why your credit limit was lowered or a notice that you have 60 days to request such a statement.

Q: *You applied for credit in your own name, and the creditor telephoned you to say that your application has been denied. Is this all the creditor must do?*

A: No, a creditor *must* provide you written notice of the actions taken on your application and provide you with the reasons for those actions. The exception is if the particular creditor received 150 or less applications in the previous calendar year. Then he may give you notification orally. But even if you receive oral notification, you must receive the reasons for the action taken on your application during that conversation.

Q: *You just started working again after your divorce, and were working for three months when you applied for credit. May the creditor deny you credit because you have not been working long enough?*

A: Yes, but you may go to the creditor and explain that while you were married, you had other jobs which contributed to payments of the bills on your former spouse's account. A personal explanation of your situation may convince the creditor to grant you credit.

Q: *The creditor informs you that credit will be granted if you obtain a co-signer. May the creditor insist that the co-signer be your former spouse?*

A: No. The creditor may require you to obtain a responsible person to co-sign and be responsible for your debts if you fail to pay

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your bill, but the creditor may not insist that it be your spouse or former spouse.

Q: *You applied for credit and received notice that you were turned down based on internal standards or failure to score high enough on the creditor's scoring system. Does this constitute proper notification of reasons for credit denial?*

A: No. You must receive the specific reason for credit denial or be informed where you may obtain those reasons. You then have 30 days from receiving that notice to request the information about your credit denial.

Q: *You applied for individual, unsecured credit. May the creditor request your marital status as part of your application?*

A: No, you may not be asked your marital status unless you live in a community property State or are using property located in a community property State as a basis for repayment.

Q: *What if I am applying for credit other than individual, unsecured credit?*

A: In that case, the creditor may ask only if you are married, separated, or unmarried. The creditor may explain that "single" includes single, divorced and widowed persons. The creditor may use this information only to evaluate the creditors rights and remedies applicable to the particular transaction, and not to discriminate in determining creditworthiness.

Q: *You believe that you were discriminated against in your credit applicaiton because you are a divorced woman. What can you do?*

A: You may contact the Federal agency which has jurisdiction over the creditor who denied you credit. The name of the agency must be on the notice which you received informing you of your credit denial. You may also sue the creditor for violating the Equal Credit Opportunity Act.

CHAPTER VII. EXCHANGING MONEY ELECTRONICALLY

Electronic Fund Transfer Act

In the years ahead, more and more money will change hands electronically. This means that you won't have to write checks, or deposit your pay check yourself, it can be done automatically through electronic fund transfers. Electronic fund transfers (EFTs) can save time, and they can insure that your check will be deposited on a certain day if you can't get to your financial institution. But with the increase of electronic transfers, there may also be an increase in consumer problems. The Electronic Fund Transfer Act was passed to protect consumers against some of these problems and to define responsibilities for these types of transactions.

This chapter deals with money that changes hands electronically. It will attempt to answer some questions about these types of transactions as well as explain how they work.

Q: *What types of transactions are covered by this law?*

A: The law applies to four common types of electronic fund transfer services:

1. Automated Teller Machines (ATMs): these computer terminals allow you to withdraw cash, make deposits, transfer money from one account to another, or pay bills without the assistance of a bank teller. In addition, ATMs are usually available to consumers 24 hours a day, seven days a week. To operate an ATM a consumer is issued a plastic "debit" or EFT card which is encoded with a secret personal identification number (PIN). Punching your PIN onto the ATM's keyboard while your card is inserted activates the machine for whatever transaction you specify.
2. Telephone Transfers: this service allows you to instruct your financial institution to make specific bill payments or transfer money between your accounts by telephone.
3. Point of Sale Terminals (POS): these terminals are located in stores and are linked with computer centers which transfer money from your account to the merchant's account electronically. Like an ATM, POS terminals are activated by a debit card.
4. Pre-authorized Transfers: through this service you can have your financial institution pay your recurring bills, such as a mortgage, by automatically taking money from, or debiting, your account. Pre-authorized transfers can also be used to credit your account with wages, pension, or benefit payments which you receive on a regular basis.

The Electronic Fund Transfer Act protects you if you make non-credit financial transactions using any of the above services.

Q: *Are there types of electronic transfers which are not covered by this law?*

A: Yes. Credit transactions are exempt from the law, even if they are made electroncially. Check guarantee and authorization services are not included, and transfers between accounts in the same financial institution are not covered. Occasional fund transfers arranged over the telephone if they are not part of a regular pay-by-phone plan are also not covered by the law.

Q. *What financial institutions are covered by the Act?*

A: All banks, savings and loan associations, savings banks and credit unions are required to comply with the law. In addition, anyone who provides consumers with debit cards and EFT services is covered.

Electronic banking is still in its early stages, and it is possible that other types of institutions such as mutual funds and stock brokerage houses may permit you to gain access to your funds electronically in the future. They too would be covered by the law, as would any other person or business holding your account and permitting access to it by electronic means.

Q: *Can a financial institution send me an EFT card if I did not request one?*

A: No. Financial institutions are prohibited from sending unsolicted cards which are "validated", that is, able to be used to make an electronic fund transfer. This is to ensure that a thief does not obtain the card and use it before you ever find out it existed. If you are sent an unsolicited card which is not validated, the issuer must include information on your rights and responsibilities if you have it validated. The issuer must also instruct you on how to dispose of the card if you do not want it. A financial institution may issue you a validated card only if you specifically request it, or if it is a renewal of an expired card.

Q: *What criteria may financial institutions use in deciding whether to issue an EFT card to me?*

A: There is no Federal law which limits the factors financial institutions may use in their evaluation of your application, unless it is also an application for credit. In that case, the institution is governed by the Equal Credit Opportunity Act. (See ChapterVI)

Q: *If a bank refuses to issue me an EFT card, does it have to tell me the reason?*

A: No, it is not required to state reasons for denial unless your request is part of an application for a new line of credit. In that case, the Equal Credit Opportunity Act (See Chapter VI) requires the institution to give you the specific reasons for its denial of your application.

Q: *If I receive an EFT card, what are my responsibilities with regard to its use?*

A: When you open an EFT account, or add EFT service to an already existing account, your financial institution is required to disclose in readily understandable language several key terms and conditions of the service. These include:

1. Your liability for unauthorized transfers;
2. The phone number and address of who you should contact if you believe an unauthorized transfer has taken place;
3. The type of electronic transfers you may make;
4. Any service charges for making electronic transfers;

5. The procedures to stop payment on a pre-authorized transfer;

6. Your right to receive documentation of transfers, such as periodic statements and receipts;

7. A summary of the financial institution's liability if it violates the Electronic Fund Transfer Act;

8. A notice of the error resolution process.

Q: *Can a financial institution change the terms or conditions of my account without notifying me beforehand?*

A: Not if any of the changes would result in greater cost or liability to you, or decrease access to your account. In such cases, it must notify you in writing at least 21 days before the change is made. Such changes might include raising service charges, or reducing the number of withdrawals that you are allowed to make in one day.

Q: *Can my financial institution charge more for EFT transactions than for similar types of transactions not utilizing electronic transfer systems?*

A: Yes. There are no restrictions on the service charges banks may impose on EFT accounts.

Q: *Can a bank limit how much money I may withdraw from an automated teller machine or cash dispenser?*

A: Yes. It is also common to limit the amount and the number of withdrawals you may make per day. These limits are designed to protect you and the financial institution if your card is stolen.

Q: *Can a financial institution require me to take an EFT card as a condition of opening a checking or savings account?*

A: Yes, but it cannot force you to use it.

Q: *What are pre-authorized transfer plans and how do they work?*

A: Through pre-authorized transfer plans, you arrange for your financial institution to receive your monthly bills and pay them by directly removing the required amount from your account on a specific date. Pre-authorized transfers are generally used to pay recurring bills of either specified amounts, such as mortgages or insurance premiums, or varying amounts, such as utility bills.

Q: *Can I also receive payments through pre-authorized transfer to my account?*

A: Yes, in many cases you can arrange to have your wages, government benefits or other recurring payments sent directly to your financial institution. When it is received, it will be automatically credited to your account.

Q: *Is my financial institution required to notify me each time it receives a pre-authorized credit to my account?*

A: Only if the person or organization which pays you does not inform you that the transfer has been made. In that case your financial institution must do one of three things. It has the option of notifying you that it has received your money or that your money has not been received, or it can provide a telephone line you can call to see whether it has been credited to your account. This requirement applies only to transfers which occur at least every 60 days. When you arrange to receive pre-authorized transfers, your bank must disclose which of the options it follows.

Q: *How will I know the amounts deducted from my account for pre-authorized transfers when the amounts vary from month to month?*

A: When the amounts of automatic deductions change each month, such as with utility bills, your finanical institution or the person being paid must provide you with at least 10 days notice of the amount and the date the transfer will occur. This gives you the opportunity to make sure you have enough money in your account to cover the payment when it is made. You can permit the institution to make payment within a certain range without notice to you and only be notified of payments outside that range.

Q: *Can my employer require me to receive my salary through direct deposit (pre-authorized transfer) to a financial institution?*

A: Yes. You have the right, however, to decide which financial institution will receive your paycheck.

Q: *How can I make sure a pre-authorized transfer from my account has been completed?*

A: Your financial institution must send you a periodic statement showing all transfers made from your account. It is not required, however, to notify you each time a pre-authorized bill payment is made. If you have reason to believe a transfer was not made on schedule, or not made at all, you should contact your financial institution immediately.

Q: *What happens if my financial institution fails to make pre-authorized transfers on time?*

A: Your financial institution is responsible for any losses you incur if you had sufficient funds in your account when the transfer was supposed to be made.

Q: *Can I stop or reverse payment on an EFT transaction?*

A: Yes, under some circumstances. Federal law does not require financial institutions to permit you to stop or reverse payments except in the case of pre-authorized transfers. Be sure to find out your financial institution's policy before you open an EFT account. To stop payment of a pre-authorized transfer, you must notify your financial institution at least three business days before the transfer is scheduled to take place. If you make notification in person or by phone, you may be required to provide written confirmation of your order within two weeks.

Q: *If I make a purchase through an EFT system, what can I do to stop or reverse payment if the goods turn out to be defective?*

A: It is up to each financial institution to decide whether or not to permit you to reverse or stop payment on EFT transactions. If the transaction was a credit purchase, you may withhold payment under certain circumstances by exercising your rights under the Fair Credit Billing Act. (See Chapter III)

Q: *Can I be charged for stopping or reversing payment?*

A: Yes. Your financial institution may assess a charge for providing you with this service.

Q: *What happens if there is an error on my EFT statement?*

A: The law requires your financial institution to promptly investigate and correct any errors made with regard to electronic fund transfers. An error consists of:

1. An unauthorized electronic transfer;
2. An incorrect transfer to or from your account;

3. An omission from your periodic statement of a transfer which should have been included or an improperly identified transfer;

4. Mistake in computing the transfer;

5. The receipt from an automated teller machine for an incorrect amount of money;

6. A request for documentation or additional information about a transfer.

Errors on your periodic statement which do not involve electronic fund transfers are not covered by the law.

Q: *What should I do if there is a mistake on my periodic statement or receipt?*

A: Notify your financial institution, orally or in writing, of the problem as soon as you discover it. You should follow any oral notice with a written confirmation even though it is not required. If you do this so it is received within 60 days after you have been sent your statement or have been provided with a receipt, your financial institution must investigate and resolve the error promptly. In order to gain your full rights under the law, you must also:

1. Provide your financial institution with your name and account number;

2. Indicate the date, amount and type of the error, to the extent possible;

3. Outline the reasons why you believe an error has occurred.

Q: *How much time does a financial institution have to investigate and correct an error?*

A: Your financial institution must report the results of its investigation within ten business days of receiving your complaint. If it prefers, it may recredit your account within those ten business days with the amount in question and then take up to 45 days to investigate the error. In any case, once it discovers an error has occurred, it must correct it within one business day.

Q: *What happens if my financial institution claims that there was no error?*

A: If your financial institution determines that no error occurred, it must provide you with an explanation of its findings within three business days after the completion of the investigation.

If the institution had recredited any account so that it could have 45 days to investigate the error, it is permitted to debit the account for the same amount. It must, however, call you or send you a notice that it has debited your account. The institution must honor all checks, drafts and other paper instruments that you gave to others for five business days after sending you the notice. The institution need not pay the checks if the checks would have bounced anyway.

Q: *Can I obtain documentation of my financial institution's findings if it claims no error occurred?*

A: Yes. You have the right to demand copies of the documents it used in making its decision.

Q: *Can my financial institution require me to notify it of errors in writing?*

A: No, but it may require you to provide written confirmation of your complaint within ten days after your oral notification. If you fail to do this, your financial institution may take up to 45 days to investigate and correct the error without recrediting your account during that time.

Q: *What actions can I take if I believe my financial institution inadequately investigated my complaint?*

A: You may sue your financial institution if it did not make a reasonable effort to investigate and correct the error, or if it took more than ten business days to correct it and failed to recredit your account after those ten business days. You should also contact the Federal agency which regulates your financial institution.

Q: *If my financial institution recredits my account, is it allowed to recredit part, but not all of the amount alleged to be in error?*

A: Only in one circumstance. If the institution has a reasonable belief that the error was an unauthorized EFT, it may withhold a maximum of $50 from the amount recredited. In all other cases it must recredit the full amount that was mistakenly taken from your account.

Q: *Can I demand that my financial institution recredit my account while an alleged error is being investigated?*

A: No. It is up to the financial institution to choose between resolving the problem within ten business days or recrediting your account and extending the investigation time to 45 days.

Q: *If my financial institution recredits my account, can it place restrictions on the use of those funds during its investigation?*

A: No. You are entitled to full use of the recredited funds during the time of the investigation.

Q: *If my account is recredited, and the financial institution determines that no error occurred, can it immediately withdraw the amount in question from my account?*

A: Yes, but only after they have informed you of the results of their investigation.

Q: *If my account is credited, and it turns out there was no error, can I be charged interest for my use of the financial institution's money?*

A: No. A financial institution may not charge you interest or impose any other service charges for using its money while they investigate an error.

Q: *Must I pay penalties charged by a creditor or merchant if my payment was late or not received because of the failure of my financial institution to make a transaction I authorized?*

A: No. If there were sufficient funds in your account, your financial institution is responsible for all damages, such as finance charges, caused by its failure to complete a transaction.

Q: *Are financial institutions required to send periodic statements which list my electronic transfer payments and credits?*

A: Yes. They must send you a monthly statement listing all EFT transactions made since the previous statement. This can be part of your regular checking or savings account statement. If no EFT transactions occur, they must still send you a statement at least every three months.

Q: *What types of information must be included on my periodic statement?*

A: Your financial institution must provide several key items of information on each monthly or quarterly statement. These include, where applicable:

1. The account number;
2. The amount of each transfer;
3. The date of each transfer;
4. The type of transfer;
5. The identity of any third parties involved in a transaction;
6. The location of the terminal where a transfer was made;
7. Any service charges;
8. The balance in your account at the beginning and the end of the statement period;
9. The phone number and address where you should direct inquiries or notice of errors.

Q: *Are there any situations where a financial institution does not have to provide me with a periodic statement?*

A: Yes, if you have a passbook account, and the only electronic transfers are pre-authorized credits to your account. Passbook accounts are savings accounts at financial institutions in which you are issued a passbook to record all your deposits, withdrawals and interest earned. (Passbook accounts are discussed in more detail in Chapter VIII.) In such cases, your financial institution may provide you with documentation of these transfers at the time you present your passbook. If you have another type of account in which the only EFT activity is preauthorized credits, your bank can provide you with documentation on a quarterly basis.

Q: *Can I receive proof of payments or deposits at the time I make an EFT transaction?*

A: Yes. The law requires the financial institution to provide you with a receipt each time you make a transfer of funds at an automated teller machine or point of sale terminal. This receipt must contain the following information:

1. The amount of money transferred;
2. The date of the transfer;
3. The type of transfer, such as withdrawal, loan payment, desposit, etc.;
4. Your account number;
5. The location of the machine;
6. The identity of anyone to whom or from whom money is transferred.

Q: *Is my financial institution required to give me proof of any transfers I order over the telephone?*

A: Only on your periodic statement. Financial institutions are not required to send you a separate receipt each time you make a telephone transfer.

Q: *Are my receipts and periodic statements proof of payments?*

A: Yes. They serve the same purpose as cancelled checks.

Q: *Can I be held responsible for unauthorized use of a card which I never received?*

A: No. Until you have received your card, it is not considered "accepted", and therefore you are not liable for any unauthorized use.

Q: *Can a bank increase my liability if it claims I was negligent in losing my card?*

A: No. Financial institutions can not raise the limits on liability contained in this law.

CONSUMER PROBLEMS

The following list of consumer problems is designed to help the reader reach a better understanding of the Electronic Fund Transfer Act through various consumer problems which are covered by this law.

Q: *You applied for an EFT card and were turned down. Does the financial institution have to provide you reasons for denying your application?*

A: No, not unless it was also an application for credit. In that case, the financial institution must follow the provisions of the Equal Credit Opportunity Act. (See Chapter VI.)

Q: *You received an EFT card after you requested one. Does the financial institution have to tell you anything specific about the terms of this service?*

A: Yes, for a complete list of terms and conditions which must be disclosed to you, see page 70.

Q: *You received notice from your financial institution stating that in 30 days, a 25¢ service charge will be imposed for every electronic fund transfer. Is this permitted by law?*

A: Yes. A financial institution may change the terms of your account if it notifies you in writing at least 21 days before the change takes effect.

Q: *You are informed that you are allowed to withdraw only up to $40 per day from an automatic teller machine. Can your financial institution restrict you in this way?*

A: Yes. Usually it is for your protection, as well as the institutions. In case your card is lost or stolen, large amounts of money could not be withdrawn from your account at one time.

Q: *You arrange to have your utility bills deducted from your account every month. A high winter heating bill causes your account to be overdrawn. Are you responsible in this situation?*

A: When deducting amounts which vary every month, your financial institution must give you ten days advance notice of the amount which is to be deducted and the date that deduction will occur. You are then responsible for having a sufficient amount of money in your account to cover that transaction.

Q: *You arrange to have your mortgage paid automatically every month through electronic fund transfer. You then receive notice from your mortgage lender that your mortgage payment is late and that you owe late charges. Are you responsible for those charges?*

A: No, if you authorized your financial institution to make such payments, your financial institution is responsible for any late charges you incur because of failure to make those payments on time.

Q: *You receive a statement on your EFT account and it shows a cash withdrawal from an automatic teller machine which you did not make. What can you do?*

A: The law requires your financial institution to promptly investigate any errors in electronic fund transfers and to correct any mistakes. You must notify your financial institution within 60 days

of being sent the statement with the error. For more information on error resolution see page 73.

Q: *What if your financial institution claims that no error occurred in your EFT accounts. What can you do?*

A: If your financial institution claims that no error occurred, it must provide you with the reasons for its finding within three business days of completing its investigation. You have the right to see the documents which the financial institution used to come to its decision.

Q: *Your financial institution recredits your account with the amount you said you never withdrew. It then finds that you actually did withdraw that amount and charges you interest on the money it credited to your account during the dispute. Can this be done?*

A: No. A financial institution may not charge you interest or service charges for using its money while an error was being investigated.

CHAPTER VIII. SAVINGS AND CHECKING ACCOUNTS

The introduction to this guide mentioned that maintaining stable savings and checking accounts was a good first step toward establishing a favorable credit rating. This, of course, is not the only purpose for such accounts. Savings and checking accounts are serious financial obligations and should not be dealt with lightly. And just as in credit situations, the terms of various savings and checking accounts vary greatly. A good consumer will shop for the best terms in savings and checking accounts, just as he or she would shop for credit. This chapter will try to answer some of the basic questions about savings and checking accounts. It will also try to explain some of the newer services which are available at financial institutions in the field of savings and checking accounts.

SAVINGS ACCOUNTS

Q: *What is a savings account and what are the advantages of having one?*

A: A savings account is a plan offered by a commercial bank or other financial institution which both protects your money and pays you interest. The money you deposit into a savings account is used by the institution to make loans, mortgages and investments. You are paid interest for the use of your money.

A savings account offers several major advantages: it earns you money by collecting interest, it establishes you with a foundation for credit, it provides you with a safe place to keep your money, and it is an investment for your future.

Q: *How safe is my money?*

A: Many financial institutions have their deposits insured by Federal agencies. This protects depositors should something happen to the financial institution.

Q: *Are all financial institutions insured?*

A: No, not all financial institutions are insured. Commercial and some mutual savings banks are insured through the Federal Deposit Insurance Corporation. Some savings and loan associations are federally-chartered and insured by the Federal Savings and Loan Insurance Corporation. All Federal credit unions and some State credit unions are insured by the National Credit Union Administration. Some States have their own insurance programs for State-chartered savings and loans and credit unions.

If you are not sure about the insurance coverage of a financial institution, ask. It is your money which will be unprotected if there is no insurance.

Q: *I know someone who borrowed their own money in a savings account. Is this possible and why would they do it?*

A: Yes, it is possible and it is called a passbook loan. This is another advantage to a savings account. With a passbook loan you

borrow against money you already have in your savings account. The amount of the loan is frozen in your account until you repay it. There are two advantages to passbook loans. First, the interest rates are lower than regular loans, and second, the money that is frozen in your savings account continues to earn interest while you pay back the loan.

Q: *What are the most important factors that I should know when shopping for a savings account?*

A: The most important factors to be aware of are:

1. The different types of financial institutions and what they offer in their savings account plans;
2. The different methods of computing the interest that you will earn;
3. The interest rate offered;
4. The frequency of computing interest by the different financial institutions; and
5. The restrictions, if any, on account balances and activity.

Q: *What are the different types of financial institutions which offer savings account plans?*

A: There are several different financial institutions which offer savings plans—commercial banks, savings and loan associations, mutual savings banks and credit unions.

Q: *Aren't all these institutions really the same?*

A: No. Banks, savings and loans, and credit unions all offer different services. They also, by law, pay different interest rates on savings accounts. On a basic passbook savings account a bank pays the least amount of interest. A savings and loan can pay ¼ percent more interest than a bank, and a credit union is allowed to give even more interest than a savings and loan. Under a fairly new law, the Depository Institution Deregulation and Monetary Control Act of 1980, this difference in interest payments is scheduled to be phased out over the next few years.

Q: *What is a passbook savings account?*

A: When you open a passbook savings account at a financial institution you are issued a passbook which becomes your record of all deposits, withdrawals, and interest earned. Passbook accounts carry the lowest rate of interest of the different types of savings accounts offered, but you can withdraw your money at anytime, usually without penalty.

Q: *Do credit unions have passbook accounts?*

A: Not really. In a credit union, depositors actually buy shares in the credit union. Therefore, a savings account at a credit union is called a share account.

Q: *Will all the money in my savings account earn interest?*

A: It depends. The amount of money which earns interest depends on the method which is used to compute the interest.

Q: *What are some of the most frequently used methods of computing interest by banks, credit unions, and savings and loan associations today?*

A: There are four methods of computation which are frequently used by financial institutions when computing interest. They include:

Low balance method.—This is the least favorable method offered by financial institutions. Interest is computed on the

lowest amount of money in your account during the period of computation, usually three months or a quarter of a year. For example, if you start with $500 in your account, withdraw $300, and deposit $500 the next day, the lowest balance during the quarter, or $200, will be used to compute your interest, even though you had a balance of $700 at the end of the period.

First in-first out method.—This method of computing pays interest on the amounts you withdraw if you withdraw the money at the end of the period of computation. This method is the second least favorable method used. For example, you have $2,000 in your savings account, and withdraw $500 on two separate occasions, you then have a balance of $1,000. Under this method interest is paid only on the $1,000 remaining in the account at the end of the period.

Last in-first out method.—This method of computation deducts withdrawals from the most recent deposits during the period of interest. This method is more profitable than both the low balance and the first in-first out methods.

Under the last in-first out method, if you have $4,000 in your savings account and withdraw $2,000, interest is paid on the $2,000 balance for that period. If you deposit $2,000 during the same period, interest will also be paid according to the time the money was in the account during the period.

Day of deposit, day of withdrawal method.—This method of computation pays interest on your money according to the number of days that the money is in the savings account. This method is by far the best, because all of your money in the account is earning interest.

Q: *What does the frequency of compounding interest mean?*

A: Frequency of compounding interest is one of the variables that determines how much interest your money earns. The more often the interest is compounded, the greater the earnings you will receive on your savings account.

Q: *What are the different frequencies of compounding interest by financial institutions?*

A: Interest can be compounded annually, semi-annually, quarterly, monthly, weekly, daily or continuously. The following example is how much five percent interest will earn in seven different savings accounts with a balance of $1,000 for a full year:

Interest method	*Interest*
Compounded annually	$50.00
Compounded semi-annually	50.62
Compounded quarterly	50.94
Compounded monthly	51.16
Compounded weekly	51.24
Compounded daily	51.26
Compounded continuously	51.27

Q: *When shopping for a savings account plan, are financial institutions obligated by law to inform me of all requirements which may be attached to the account?*

A: No. Currently, there are no Federal laws or regulations which provide for full disclosure of information by the financial institution about computation and payment of earnings on savings ac-

counts. However, several of the Federal agencies which regulate financial institutions do have regulations which require that you be told about penalties for early withdrawals. Nevertheless, these regulations are not always widely enforced. It is important, therefore, to ask as many questions as you need to, and to fully understand the requirements of any account that you open.

Q: *What are some of the "hidden factors" or requirements which financial institutions usually do not disclose?*

A: The major hidden factors which are attached to many savings plans and not revealed by some financial institutions are:

1. A penalty fee for making too many withdrawals within a certain time period;
2. A limit to the amount of money which can be withdrawn at one time;
3. A penalty if you withdraw a small amount such as below $5;
4. A penalty may also be charged if you do not keep your account active by depositing money either monthly, quarterly or yearly. This penalty is called a dormant account fee and may vary depending on the individual financial institution;
5. A penalty for letting the balance fall below a certain amount;
6. Failure to pay interest on small accounts, such as those under $100.

Q: *Do all financial institutions have a limit on the amount of withdrawals that can be made in one period?*

A: No. Some financial institutions have free service while others may not. It is up to you to shop around to find the best service.

Q: *Do all financial institutions require a minimum amount of deposit in order for your money to earn interest?*

A: No. The policy of many financial institutions is to have a certain amount of money in the savings account before interest will be computed. However, some financial institutions do not have these requirements.

Q: *Will I be able to withdraw the full amount of money in my account without having to pay a penalty?*

A: Penalties vary from financial institution to financial institution. Be sure to inquire about such penalties when shopping for a savings account.

Q: *Will I lose interest when withdrawing money from my account before the interest is computed for that period?*

A: Whether or not you lose interest depends on the method of computation being used to compute your interest.

Q: *Will the money be available to withdraw in case of an emergency?*

A: It should be. Again, you will have to inquire about services of each financial institution when shopping for a savings account.

Q: *If I open a savings account at one of a financial institution's many branch offices, will I be able to withdraw money from any of the branch offices?*

A: Financial institutions vary on their policies regarding their branch offices. Although they are supposedly located for the convenience of the customer, many financial institutions require that you have a signature card on file at each of the branch offices for

verification of your account before they will serve you. Again, inquire into the financial institution's policies when shopping for a savings account.

Q: *What are "grace days"?*

A: Grace days are days at the beginning of the quarter when deposits made within the first ten days are counted as if they were in on the first day of the period.

Q: *What are "dead days"?*

A: Dead days are days at the end of the period of interest when no interest is paid.

Q: *What is a statement savings account?*

A: In a statement savings account, the financial institution sends you a statement (monthly or quarterly) listing deposits, withdrawals, and interest earned. Because you have no other record of your account, you should keep these statements in case of errors in your account.

Q: *If I open a statement savings account, what do I use to show that I have an account with the financial institution?*

A: The financial institution may supply you with a passbook-type form which does not officially serve as a record of the amount of money in your account, but may be used for your information and for your account number. You should also keep the receipts from deposits and withdrawals. The financial institution may also provide a savings account card which would serve to verify your account.

Q: *I have read newspaper advertisements on savings plans which say that the financial institution offers a savings plan account with 10 percent, or more, interest annually. How are these accounts different from regular passbook or statement savings accounts?*

A: Some savings account plans which offer more interest than passbook or statement accounts are called certificates of deposit. They differ from regular accounts in that the money deposited must remain in the account for a specified period of time. There are penalties for early withdrawals before the date of maturity. With a passbook or statement account, you are usually free to withdraw your money whenever you want to. As a consumer you must decide how long you are willing to put you money aside before you choose a certificate of deposit.

Many certificates also require a certain minimum deposit to open the account. The minimum can be as little as $100 or as much as $10,000 or more.

Q: *I have heard a lot about individual retirement accounts and Keogh accounts. What are they and how do they work?*

A: Individual retirement accounts (IRAs) are available to any wage earner. Keogh accounts are for individuals who are self-employed. Both are savings instruments designed to help consumers save for their retirement. They both have two important advantages:

1. The money invested in such accounts can be directly deducted from your taxable income for the year the investment is made; and

2. The interest earned on those funds is not taxable until it is withdrawn, usually when an individual retires and is likely to be in a lower tax bracket.

Q: *Is there a limit on how much money I can put into these accounts?*

A: Yes. With an IRA, you can contribute either 100 percent of your earned income, or $2,000—whichever is less. If you have an account with your spouse who is unemployed, you can contribute up to $2,250. Self-employed individuals can contribute up to $15,000 annually in a Keogh account.

Q: *May both a working husband and working wife have an IRA?*

A: A working husband or wife may establish separate IRAs, and make contributions of up to $2,000 each. The many wives now working outside their homes will want to look into this possibility as a means of building extra retirement income.

Q: *When are taxes paid?*

A: No Federal income tax is paid on either savings or interest until distribution. At that time most individuals are in a lower tax bracket, with perhaps more exemptions available, so that the tax savings can be considerable.

Q: *How are benefits taxed?*

A: Benefits are taxed as ordinary income as they are received in a taxable year. If you choose to receive your benefits in a lump sum, you may be able to use the five-year income average provisions available to all taxpayers.

Q: *If I am self-employed and have a Keogh account can I also open an IRA account?*

A: Yes. Keogh owners and those with pension plans can also open IRAs. All contributions to IRAs and Keoghs are tax deductible.

Q: *Can I make contributions to an IRA through a payroll deduction plan?*

A: Yes, many larger companies may offer employees automatic payroll deductions to an IRA account. Check with your company's payroll department. Remember, you can open an IRA even if you have a pension plan with your company.

Q: *Can I borrow against my IRA or Keogh like a passbook savings account?*

A: No. If you do, you will have to pay taxes and penalties and will lose the benefit of the IRA.

Q: *When can I withdraw money from my IRA?*

A: You can withdraw money from your IRA or Keogh anytime after age 59½, and must begin receiving payments before the age of 70½. Any withdrawals made prior to age 59½ are subject to a ten percent early withdrawal penalty (with the exceptions of disability or death). There is also six percent penalty on contributions in excess of the $2,000 ($2,250) maximum annual contribution. You can, however, withdraw excesses without penalty if you do it before you file your taxes.

Q: *What is the deadline for contributing to an IRA?*

A: You can contribute up until the time you pay your taxes for the year. For example if you pay your taxes on April 15th of the following year, that is your deadline. Remember that the sooner you contribute to an IRA, the sooner you start earning tax-deferred interest or dividends.

Q: *If my spouse and I have a joint IRA and then divorce, can I then contribute to the account on my own?*

A: Yes, if your joint account has been in effect for at least five years prior to the year of your divorce, and if your ex-spouse made contributions in three of those five years. You are limited to a $1,125 contribution annually. In addition, if you are working, you can contribute up to $875 more in a separate, new IRA to meet the $2,000 maximum annual contribution for a single person.

Q: *If I die before I retire, is there any Federal estate tax?*

A: Yes and no. In the case of your death, your beneficiary may elect to withdraw the funds from your IRA. The tax will differ depending on the method of distribution selected. You may want your beneficiary to have professional guidance to determine the most favorable form of distribution of those funds.

CHECKING ACCOUNTS

Q: *What is a checking account?*

A: A checking account is an account through which you can withdraw money by writing the amount you wish to withdraw, who you wish to receive the money, your account number, the date of the transaction and your signature on a piece of paper. All this information is now on the standard forms we know as checks.

Q: *What is the advantage of a checking account?*

A: A checking account is most convenient in paying bills, and as said before, helps to establish a credit rating.

Q: *Do checking accounts cost money?*

A: Usually yes, but some are free. Check the details of the account carefully before opening one.

Q: *What kind of costs are there?*

A: Financial institutions which offer checking accounts can charge you for having checks with your name and account number printed. They can also charge a service charge each month just to handle your account. They can charge you for each check you write or each deposit you make. These costs vary greatly, so shop around.

Q: *Can you earn interest on checking accounts?*

A: Yes, but they are usually called NOW (negotiable order of withdrawal) accounts. Credit unions can also offer a share draft account which works like a checking account and pays interest.

Q: *How much interest can I get on a NOW account?*

A: Banks and savings and loans can pay 5¼ percent on NOW accounts. Credit unions can pay more than that on share drafts.

Q: *Do NOW accounts cost anything?*

A: Usually yes. Financial institutions which offer NOW accounts usually impose finance charges on these accounts if they fall below a certain amount, say $500. There may also be a charge for each check you write.

Many times these charges are more than the interest earned on the account, so a NOW account could cost you money. If you are not sure if you have enough money to benefit from a NOW account, ask an official of the financial institution which offers the account what the "break even" point is. This is the amount of money you must have on deposit so that your earned interest will be more than your finance charges.

Q: *Do NOW accounts vary from place to place?*

A: Yes, the terms of a NOW account vary greatly among financial institutions. Shop around for the best terms for you.

Q: *What happens if I write checks without having enough money in my account to cover it?*

A: This is known as bouncing a check and it is a serious offense. Not only does the financial institution charge you for a returned check, but writing checks with insufficient funds leads to a bad credit rating. In some States it can lead to criminal prosecution.

Q: *Are uncollected funds the same as insufficient funds?*

A: No, uncollected funds are checks which you deposited in your account and didn't clear before you wrote a check against it. Be prepared to wait up to two weeks before a financial institution will honor an out-of-town check deposited in your account. Even checks deposited from local banks take several days to clear.

Q: *Can a financial institution really hold a check I deposited for a week even if it is from a local bank just across the street?*

A: Yes. Financial institutions usually wait a week before honoring local checks which are deposited. This gives the financial institution time to have the check clear the institution from which it was drawn. The amount of time financial institutions hold deposited checks may vary. Some hold local checks for one week, and out-of-town checks for two weeks. Ask your financial institution about its policy on check clearing, and shop around for one that clears checks quickly. If you need to use the money deposited right away, some financial institutions will allow you to cash a check if you have a balance in your account to cover the amount of the check you are cashing. If you do not have a sufficient balance, and still need the use of the money, you could ask that the check you receive be certified from the bank from which it is drawn. A certified check is guaranteed by the financial institution from which it is drawn and is therefore just like cash.

Q: *Can a financial institution charge me a fee for returning my canceled checks from my checking account?*

A: Yes. Many financial institutions are charging fees for the return of checks. This is to defray the administrative cost involved in returning canceled checks. As an option to returning checks, some financial institutions offer what is called "check safekeeping" or "check truncation" whereby the financial institution stores copies of your canceled checks on microfilm. This way they do not have to return the check to you, and if you need a copy of a canceled check, they can provide it. Again, policies on check returns vary. Shop around for a financial institution which provides the service you want at the least cost. And always remember to ask what the institution's policy is on check returns before you open a checking account.

Q: *Are there any laws which protect consumers with checking accounts similar to the laws dealing with loans or consumer leasing?*

A: No. There are currently no Federal laws which deal specifically with consumer checking accounts. It is therefore in your interest to know the terms of a checking account before you open one at a financial institution. Again, shop around as terms vary greatly from one financial institution to another.

DEBIT CARDS

Q: *What are debit cards?*

A: Debit cards look like credit cards, but instead of issuing credit, they charge any purchase that you make directly against your account at the institution which issued the debit card. In short, it is like a checking account without the check.

Q: *How do debit cards work?*

A: They are similar to credit cards. When you make a purchase, a record is made, just as in a credit transaction, from the plastic card with your account number on it. Instead of billing you for that purchase, the financial institution takes the money from, or debits your account, without the paperwork involved in clearing a check. It may be done by an electronic fund transfer similar to those discussed in Chapter VIII.

Q: *What are the advantages of debit cards?*

A: The main advantage is convenience. If you write a large number of checks, using a debit card may be easier and doesn't cause as much paperwork as a checking account. It may also be more readily accepted than a check when you are travelling.

CONSUMER PROBLEMS

The following list of consumer problems is designed to help the reader reach a better understanding of checking, savings and retirement accounts through various consumer situations which may occur.

Q: *You open a savings account with $50 and do not make any additional deposits or withdrawals for three months. When you receive your quarterly statement it shows a balance in your account of $45. Is this possible?*

A: Yes. If your financial institution has a minimum balance requirement of over $50, or some type of activity requirements on savings accounts, it is possible that the institution would charge you this fee and take it directly from your account. Check the terms of any account before you open one.

Q: *You have $5,000 in your savings account and are approved for a passbook loan of $4,000. You then attempt to withdraw $1,200 from your account, but are informed that you can only withdraw $1,000. Is this allowed?*

A: Yes. When you have a passbook loan the amount of the loan is frozen in your account, and may not be withdrawn until you repay the loan.

Q: *You open a passbook savings account at a bank and receive 5¼ percent interest on your money. Your friend has a share account at a credit union and receives seven percent on her money. Is it up to the individual financial institution to decide what interest rate to pay on its accounts?*

A: Up to a point. Maximum interest rates on passbook accounts at banks are set by law. Credit unions have no maximum ceiling and can pay whatever rate of interest they choose.

Q: *You have a savings account and withdraw half of the money you have saved, ten days before the end of the quarter. You then find that you received no interest on that money for the entire quarter. Can this be done?*

A: Yes. It depends on the method of computation used by your financial institution to compute your interest. It is important to check the terms of your account and the method of computing interest before you open an account.

Q: *You open a high interest yielding account with $10,000. The account matures in six months. You need the money before that time for a financial emergency. Can you withdraw it?*

A: Yes, but the financial institution will charge you a penalty for withdrawing your money before the account matures. The amount of the penalty may vary depending on the financial institution involved.

Q: *You open an individual retirement account. You need the money before age 59½. Can you withdraw it?*

A: Yes, but any withdrawals made before age 59½ are subject to a ten percent early withdrawal penalty and you will also have to pay income tax on the amount you withdraw.

Q: *You open a NOW account and find that the service charge on the account is more than the interest earned. Is this possible?*

A: Yes. Most NOW accounts have service charges. It is best to ask your banker what the "break even point" is, or how much you need to keep in your account so that the service charge is less than the interest earned.

Q: *You deposit any out-of-town check in your checking account. A week later you write a check against it and are notified that you have insufficient collected funds in your account to cover the check. Is this possible?*

A: Yes. Many banks require two weeks to clear out-of-town checks. If you need to use the money right away, ask the person from whom you are getting the check to have it certified. Then it should be honored as cash.

Q: *You receive notice from your financial institution that starting next month there will be a 25¢ charge for every check you write. Can this be done?*

A: Yes. There is no law governing checking accounts, and financial institutions are free to impose whatever service charges they see fit. You are also free, however, to withdraw your money and open another checking account at a different financial institution which offers better terms.

Q: *You purchased an item with a debit card, and then decided to return it. Does this present a problem?*

A: No. With the debit card, if you return an item, the cost of the item will be credited to your bank account just as a returned item would be credited to your charge account.

CHAPTER IX. OVEREXTENDING YOURSELF THROUGH CREDIT

Fair Debt Collection Practices Act

Even the most careful consumer may find that emergencies or unplanned expenditures upset household budgets to the point where credit payments cannot be met on time. If this happens to you, don't panic, and most important, don't ignore the situation. Contact your creditors and explain the situation, don't avoid them. Be honest and try to work out some type of arrangement to pay what you owe. Your creditors will probably help you to arrange new payment terms. If you find that you are overextended and that your monthly income is less than what you owe, it is a good idea to contact a reputable consumer credit counseling service. These organizations can be found in the Yellow Pages of your telephone book or ask your financial institution or creditor if they can recommend a credit counselor. These counselors will help you to rework your payments and offer advice on how to manage your finances through this difficult time. The most important thing to remember if this happens to you is DO NOT AVOID CREDITORS. It will only make a bad situation worse.

If you do not pay a creditor on time he may at some point decide to turn your debt over to a debt collection agency. The debt collection agency will then attempt to collect the debt from you. Most debt collectors are ethical and their contacts will be civil and reasonable. There are other debt collectors, however, who may use unfair tactics such as harassment or deception.

If you are contacted by a debt collector on behalf of one of your creditors, you should be aware of your rights. The Fair Debt Collection Practices Act was passed to protect consumers against harassment by debt collectors and other unethical practices by those people who collect unpaid debts.

The Fair Debt Collection Practices Act was passed to protect you against abusive, unfair or deceptive conduct by debt collectors. You are protected by this law whether or not you are in default on credit payments, but the law does not allow you to cancel legitimate debts which you owe.

Under this law, debt collectors may not use any false or deceptive tactics in order to collect a debt or obtain information. The following are examples of conduct forbidden by debt collectors when collecting debts:

1. Using a false name;
2. Pretending to be a government official, attorney or credit bureau employee;
3. Falsely claiming that you have committed a crime and will be arrested:

4. Claiming your wages or property will be seized, unless it is legal and the debt collector or creditor intends to seize your wages or property;

5. Giving you papers that appear to be government or legal documents, but are not;

6. Leading you to falsely believe that certain legal forms do not require any action on your part;

7. Giving or threatening to give out false information about you;

8. Threatening to take any action that cannot legally be taken or that they do not intend to take.

Q: *Are all debt collectors covered by this law?*

A: No, only those persons or organizations whose main business is debt collection are required to obey this law. The law does not apply to creditors and their employees collecting their own debts, attorneys collecting debts for their clients, credit counselors, or Federal government employees.

Q: *How do debts get referred to debt collectors?*

A: Debt collectors usually receive a certain percentage of the amount collected on a debt. For instance, if a debt collector persuades a consumer to pay $60 of a debt, and the debt collector has an agreement with the creditor to keep 25 percent of any amount collected, then the debt collector would keep $15 and turn over $45 to the creditor. In some cases a debt collector may buy the debt from the creditor. In this case, the debt collector then becomes the creditor and keeps the total amount collected.

Q: *What kind of debts are covered under the Act?*

A: The law applies to personal, family or household debts, such as automobile loans or medical care. Persons collecting any type of business obligations are exempt from the law's requirements.

Q: *How often may a debt collector contact me?*

A: Until you inform a collector that you wish him to cease communication or are being represented by an attorney, there is no specific limitation on how often a collector may communicate with you or your spouse. It is against the law for any collector to continually make phone calls for the purpose of annoying you or any member of you household.

Debt collectors may contact you in person, by mail, by telephone, or by telegraph. They may not, however, communicate with you by post card, or put the name of their business on the outside of an envelope if that name indicates that they are in the business of collecting debts.

Q: *May a debt collector call me at 4:00 a.m.?*

A: No. A debt collector is forbidden to contact you before 8:00 a.m. and after 9:00 p.m. A debt collector may not contact you at any unusual time or place.

Q: *May debt collectors contact my family, friends, neighbors, or employer to collect a debt?*

A: No. Contact with third parties is permitted, however, for purposes of learning your address, phone number, and place of employment. Also, debt collectors may contact a third party such as your employer if he or she has the permission of a court of law, or if it is necessary to enforce a court judgment.

Q: *What may a debt collector do in obtaining information about my location?*

A: A debt collector may learn your phone number, address and place of employment. While doing so the collector:

1. Must identify himself or herself;
2. Cannot state that you owe any debt;
3. Cannot communicate by post card;
4. Cannot contact the same person more than twice unless given permission to do so;
5. Cannot contact any other person once communication with your attorney is established;
6. Cannot indicate that he or she is a debt collector.

Q: *Can I stop a debt collector from contacting me?*

A: Yes. You must write to the collector informing him or her that you wish to end communication or refuse to pay the alleged debt. Once you have made this notification, in writing, the collector may only contact you to acknowledge your request, or to notify you that specific actions may be taken to resolve the situation, such as legal action against you to recover the debt.

Q: *What can I do if I believe I do not owe the alleged debt?*

A: First, you should notify the collector in writing within 30 days after you are informed of the debt, that you believe you do not owe the debt. If you do this, the debt collector may not contact you again until he provides you with written verification of the debt such as a sales slip or contract, or a copy of a legal judgment against you. If you do not recognize the name of the creditor to whom you allegedly owe money, you may also request the name of the original creditor. Again, the collector may not attempt to collect the debt until you are provided with this information. Once you are given the required information, collection activities may resume again. (See sample letter page 95.)

Q: *What information must a collector give me about my alleged debt?*

A: Within five days after his initial communication with you, the debt collector is required to provide you with a written notice telling you:

1. The amount of the debt;
2. The name of the person or company to which you owe money; and
3. That you must notify him within 30 days if you believe you do not owe the alleged debt.

Q: *What protection do I have against harassment?*

A: The Fair Debt Collection Practices Act specifically prohibits debt collectors from harassing, threatening, or in any way abusing consumers. This prohibition includes, but is not limited to, the following conduct:

1. The use or threat of violence;
2. The use of obscene or profane language;
3. The publication of lists of consumers who refuse to pay their debts or any other public announcement of your debt;
4. The use of telephone calls in which the caller does not identify himself or herself or intends to annoy any person in your household.

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Q: *Can a debt collection agency file a lawsuit against me to recover a debt?*

A: In most cases, no. Generally only the person to whom you owe money can sue you. A debt collection agency usually may take legal action against you only if it has purchased your debt from the creditor.

Q: *Can debt collectors inform me they will take legal actions against me if they do not state exactly what those actions will be?*

A: Debt collectors may not threaten you with further action unless they intend to take it. Collectors are also prohibited from threatening to take any actions which they legally cannot take.

Q: *Are debt collectors allowed to bring legal action against me outside of the area in which I live?*

A: Unless the collector is trying to take possession of property which secured your loan and is outside of your home town, any legal actions must be brought in the judicial district of your residence or where you signed the contract in question. Remember, in most cases only the creditor and not the collector may file a suit against you to recover the alleged debt.

Q: *If a debt collector breaks the law, am I still responsible for paying my debt?*

A: Yes. If a legitimate debt is being collected, you are still obligated to pay even if the collector violates any provisions of the law.

Q: *What can I do if I believe a debt collector has broken the law?*

A: If you suspect there has been a violation of the law, you have the right to sue a debt collector in a Federal or State court within one year after the law was allegedly broken. You are entitled to recover the amount of any actual damages, as well as court costs and attorney's fees. A judge may also award you up to $1,000 in additional damages.

Q: *Who can I contact if I believe the law has been broken?*

A: The Federal Trade Commission has primary responsibility for enforcing the Fair Debt Collection Practices Act. Its address can be found on page 101. It may also be helpful to contact your local consumer protection agency or your State Attorney General's office. You may also consider contacting an attorney.

Q: *Are debt collectors permitted to charge me for the costs of collecting my debt?*

A: No. Collectors are prohibited from assessing any interest, fees or other charges unless they are included in the contract or expressly permitted by State law.

Q: *Can I be forced to pay for collect calls or telegrams from a debt collector?*

A: Only if you agree to accept the call and pay for it. However, if the debt collector conceals the purpose of the contact he will have violated the Federal debt collection law and could be sued for damages.

Q: *If I owe more than one debt but don't pay for all of them at once, can the debt collector decide which creditor will get paid first?*

A: No. You alone have the right to decide how your payments will be applied. A debt collector may also not apply any payments to debts you believe you do not owe.

Q: *Can a debt collector refuse to take my partial payment?*

A: Yes.

Q: *If I cannot pay my bill right away, can a debt collector demand that I give him a postdated check?*

A: No. You are not required to give a debt collector a check or series of checks which are postdated. If you choose to pay with a postdated check or other form of payment, debt collectors are required to follow certain rules. Collectors may not deposit, or even threaten to deposit, a postdated check before the date of the check. They are also not allowed to take postdated checks for which there are insufficient funds just so they may bring criminal charges against you. Debt collectors are also prohibited from accepting a check postdated by more than five days unless they notify you in writing at least three, and no more than ten, business days in advance of when it is deposited. This provides you with time to make sure you have sufficient funds in your account.

Q: *Are debt collectors allowed to take personal property without my permission?*

A: No. Unless it is property which secured your loan, collectors have no right to take any of your belongings from you. Debt collectors and debtors may only take property that secures your loan, if they can take it without breaking the peace. Debt collectors may not threaten to take any property unless they have both the right and the intention to do so.

CONSUMER PROBLEMS

The following list of consumer problems is designed to help the reader reach a better understanding of the Fair Debt Collection Practices Act through various situations which may occur and which are covered by this law.

Q: *You recently lost your job, and although you believe your unemployment will only be temporary, you cannot maintain payments on your accounts. What can you do?*

A: The most important thing to do in this situation is to contact your creditors and explain your circumstances. Do not ignore your debts. Your creditors may be willing to suspend payments or receive a lower payment for the amount of time that you are unemployed or work out an agreement which is acceptable to both of you.

Q: *You contacted your creditor but were informed that your debt was turned over to a collection agency. That collection agency contacted your former boss and informed your former employer that you owed money. Is this allowed?*

A: No. A debt collector may not state to a third party that you are in debt.

Q: *A debt collector contacted your former boss to find out your current address. Is this allowed?*

A: Yes. A debt collector may contact a third party to find out your phone number, address, and place of employment. But, while doing so the debt collector cannot take any of the actions listed on page 91.

Q: *A debt collector contacts you and states that your car and all your other personal belongings will be seized if you do not pay the debt. The debt collector is also abusive on the telephone. Is this allowed?*

A: No, a debt collector may not use abusive language when contacting you. A debt collector also may not threaten to take any personal property unless the debt collector legally may do so, and intends to do so. The debt collector may not threaten you just to scare you.

Q: *You are contacted directly by the creditor to whom you owe money and that creditor is abusive on the telephone. Is this a violation of this law?*

A: No, this law applies only to those people or organizations whose main business is to collect debts. The law does not apply to creditors or their employees collecting their own debts, attorneys collecting debts for their clients, credit counselors, or Federal government employees. Such abusive conduct may, however, be prohibited by the law of your State.

Q: *You have been contacted by a debt collector several times. Can you request that the debt collector not contact you again?*

A: Yes, but you must write to the debt collector stating that you wish the debt collector to stop contacting you. Once you have done this, the debt collector may only contact you to acknowledge receipt of your request or to tell you that specific actions may be taken against you, such as legal actions.

Q: *You are contacted by a debt collector, but you believe that you do not owe the debt which is being collected. What can you do?*

A: You must notify the debt collector in writing within 30 days of being informed that you owe this certain debt stating that you believe there is a mistake. After you do this the debt collector may not contact you again until the debt collector provides you with written proof that you owe the money. If you do not recognize the name of the creditor to whom you owe the debt, you may then request the name of the original creditor, in case this debt was purchased. The debt collector may not contact you again until you are given this information.

Q: *You are contacted by a debt collector who states that you owe someone $50. Is this all the debt collector must tell you?*

A: No, the debt collector must state the amount of the debt you owe, the name of the person or company to whom or to which you owe the money, and that you have 30 days in which to contact the debt collector if you believe you do not owe this debt.

Q: *You are contacted by a debt collector and the debt collector states that if you do not pay the debt being collected, the debt collector will sue you. May the debt collector do this?*

A: Usually no. In most cases, only the person or business to whom or to which you owe money can sue you. The debt collector can only sue you if the debt collector has purchased your debt, and thereby becomes the creditor.

Q: *You are continually harassed by a debt collector who calls you at all hours of the day and night. You wrote a letter requesting the debt collector to stop contacting you, but your letter was ignored. This is a violation of the law. What can you do?*

A: You may sue the debt collector for a violation of the Fair Debt Collection Practices Act. But, you must do it within a year after the debt collector broke the law. Further details about lawsuits are found on page 92.

CONSUMER LETTER TO DEBT COLLECTOR REQUESTING

THAT COLLECTOR END FURTHER COMMUNICATION

(Your Address)

(Date)

(Collection Company)
Street Address
City, State, Zip Code

Gentlemen:

As I discussed with you on the telephone last week, I maintain that I do not owe the alleged debt to (Creditor). Therefore, I wish to end all communication with you and any other employee of your company in regard to this alleged debt.

Sincerely,

(Your Signature)

CHAPTER X

Special Financial and Credit Problems of Previously Married People

An increasing number of households are headed by previously married people. This chapter deals with various credit and financial situations that individuals may encounter when they divorce, separate or become widowed. Unlike the other chapters in this guide, the problems presented here do not focus on any particular Federal law. In some instances, credit problems that arise with individuals who were previously married may have to be settled in court. Remember that situations will vary among individuals and among States. Therefore, the answers presented here are general in nature and may not apply to all cases. They should be considered only as a guide to credit problems for previously married individuals.

Q: *My husband recently died, and now I find that the credit accounts that were in his name only have been cut off. Can creditors do this even if I have a substantial income from my husband's estate?*

A: Yes, if your husband's credit accounts were in his name only creditors may discontinue your use of them upon his death. You may, however, reapply for credit in your own name. Creditors must consider your credit applications as they do all other credit applications they receive. They may not discriminate against you because of your age or the fact that you are a widow. If you are denied credit, you have the right to know the specific reasons for the denial.

To help you establish a credit history, you should have all accounts reported to credit bureaus in both spouses' names. Under the Equal Credit Opportunity Act (see Chapter VI), creditors must consider your credit history on any credit account you held or used jointly with your spouse. Therefore, you should make sure that all accounts that you use are reported in your name as well as your spouse's, even if only your spouse is liable for the account. This way, should one spouse die, the other is still listed on the account and will have a credit history in his or her own right. To have accounts listed in both names, simply contact the creditors involved and tell them that you would like to have your accounts reported in both names.

Q: *My husband had credit cards in his name only but permitted me to use the account. He recently died, and the creditors want me to pay for charges he made before he died. Am I obligated to pay these charges?*

A: No, if the account was only in your husband's name, you are not liable for charges which he signed for. The creditors can, how-

ever, file claims against your husband's estate for payment of his debts.

Q: *My husband and I had a joint automobile loan at the time he died. Can the creditor demand that I pay the loan off in full?*

A: Maybe. You should check the loan document for the definition of default. In many documents, default is defined to include death of one of the consumers. Upon default, creditors can require that the entire outstanding amount of the loan be paid off at once. As a practical matter, however, many creditors will permit you to continue to make the regularly scheduled payments if you show them that the payments are within your means and can be made as scheduled.

Q: *I have an account in my name only. If my spouse dies, can the creditor demand that I pay off my account immediately?*

A: No. If you are the only person legally obligated to pay your account, a change in marital status is irrelevant. Under the Equal Credit Opportunity Act, creditors are forbidden to take marital status into account when considering your application or reviewing your account.

Q: *My spouse and I had a joint credit card account. When my spouse died, the creditor wanted to lower my line of credit. Is that permitted?*

A: Without evidence of your inability or unwillingness to pay, a creditor cannot require you to reapply for the account, change the terms of the account, or close the account based on a change in marital status of someone who is jointly liable on an account.

The creditor can, however, require you to reapply based on the change in marital status if your new income cannot support the amount of credit currently supplied to you.

Q: *My wife had checking and savings accounts in her name only. When she died suddenly, the financial institution where she had these accounts would not release the money to me. Can they do this?*

A: Yes, if the accounts were in her name only and you did not have the right to withdraw money on your own. A common type of account that permits the widowed spouse to gain quick access to the funds is an account that is being held "in trust for" the surviving spouse. Under most State laws the survivor need only bring a copy of the death certificate to the bank to have the money released. In most other situations the money can only be released through the legal process of settling the deceased spouse's estate, a process that varies from State to State and can be time consuming.

Q: *My wife ran up sizable bills on my credit card at department stores before we separated. Am I responsible for paying her bills?*

A: Yes, if the credit accounts are in your name, you are responsible for the bills. You should, however, notify the creditor, preferably in writing, that your wife is no longer authorized to charge on your account. She would then have to open accounts in her name and be considered for credit in her own right.

In many States, however, there is an old legal doctrine called the law of necessaries that makes a spouse responsible for certain debts incurred by the other spouse, such as bills for food, clothing and shelter. In some States obligations under the doctrine cease upon separation, but in other States a spouse can be held liable for necessaries until a divorce decree is entered.

The bills in question would have to be settled between you and your wife should you seek a divorce or some separation which involves a settlement.

Q: *My husband left and now I am receiving calls from his creditors for items that he purchased for his own use. Am I responsible for his bills?*

A: If the accounts were in both names, you are also responsible for the bill. (See the following question on closing joint accounts.) You can, however, follow the procedures in Chapter IX for dealing with debt collectors. If the accounts were in his name only, you would not be responsible for his debts. Should you and your husband separate or divorce, the matter of these debts should be part of your legal settlement.

Q: *My spouse and I recently separated. Can I prevent my spouse from using our joint credit c bds?*

A: If either party of a joint account notifies the creditor that he or she wants to close the account, the creditor will close the account. Neither party will then be able to use the account. Either spouse can then apply for credit in his or her own name based upon their individual creditworthiness Since the account was a joint account, both spouses are liable for all charges made up to the time the account was closed.

Q: *My spouse and I had a joint checking account. My spouse withdrew all the money from the account when we separated. Can I get the bank to give me my share of the money back?*

A: No, under the terms of a joint account, either spouse alone may withdraw any or all of the money. The bank has no liability as long as the person withdrawing the money has been authorized to do so. The spouses will have to settle the matter between themselves or as part of the separation or divorce proceedings.

Q: *My husband and I had been contributing to a joint IRA account for five years when we divorced. I was not working during that time. Am I entitled to half of the money in that IRA account?*

A: This would have to be settled through agreement or through divorce proceedings. You are, however, entitled to continue to contribute to the account on your own if your joint account has been in effect for at least five years prior to your divorce and if your ex-spouse made contributions in three of those five years. You are limited to a $1,125 contribution annually (half of the total maximum of $2,250). In addition, if you are now working, you can contribute up to $875 more in a new separate IRA to meet the $2,000 maximum annual contribution for a single person. (see Chapter VIII, Savings and Checking Accounts)

Q: *My wife and I recently divorced. I recently found that she is continuing to charge on my credit accounts. Am I responsible for paying those bills?*

A: Yes, if you did not give notice to the creditors that you no longer allow your ex-wife to charge on your account. Once you notify a creditor that you no longer authorize your ex-wife to use your account, you are not responsible for the charges she makes.

Q: *I am separated from my husband and receive monthly child support payments from him. Must I disclose these payments when I apply for credit in my own name?*

A: No, you do not have to disclose monthly child support payments. If you do decide to disclose them, a creditor who considers income as part of a credit application must consider child support payments as part of your income if they are made on a regular basis.

Q: *My ex-spouse is required by court order to pay me alimony. Can creditors refuse to consider that income when I apply for credit?*

A: No, they cannot refuse to consider alimony payments if they are made regularly and if you chose to dislose them to the creditor. If a creditor considers income a factor in deciding to grant credit, then the creditor must consider alimony payments as long as they are made on a regular basis.

Q: *I recently separated from my spouse and support myself through two part-time jobs. May a creditor refuse to consider these sources of income when I apply for credit?*

A: No, a creditor may not refuse to consider income from part-time employment. Like all income, however, the creditor may consider the amount of income, the stability of part-time employment and the reliability of receipt of that income when determining your creditworthiness.

Q: *Must credit bureaus maintain separate files on me now that I am divorced from my spouse?*

A: Yes, credit bureaus must report information about you separately. That information may include, however, your credit history on accounts that you held jointly with your spouse prior to your divorce, or information on accounts which were in your spouse's name but you were permitted to use.

Q: *My former spouse was a poor credit risk, and had an unfavorable credit history. Can I be denied credit after we divorce based on information creditors receive about accounts I shared with my ex-spouse?*

A: The Equal Credit Opportunity Act (see Chapter VI) states that if you have been denied credit simply because an ex-spouse was a poor credit risk, a creditor must consider any information that you can offer to show that the unfavorable credit history on a former joint account does not accurately reflect your own credit history. In addition, the Fair Credit Reporting Act (see Chapter IV) permits you to include a statement of explanation concerning information in your credit file which must be sent to creditors along with your credit report.

Q: *After our divorce, my ex-spouse declared bankruptcy. Will that affect my credit rating?*

AA: No, not if the bankruptcy occurred after your divorce. Once you are divorced, the credit history of your ex-spouse would have no affect on your credit standing. The Equal Credit Opportunity Act (see Chapter VI) requires creditors to consider applicants on the basis of their own creditworthiness and not that of their spouses or ex-spouses.

FEDERAL AGENCIES' ADDRESSES

The various Federal consumer credit laws presented in this guide are enforced by Federal agencies. If you would like further information, or have a particular credit problem that you would like answered, you can contact the following agencies:

If your problem is with a retail department store, consumer finance company, all other creditors, all non-bank credit card issuers, credit bureaus and debt collectors write to:

Division of Credit Practices
Federal Trade Commission
Washington, D.C. 20580
(202) 724-1140

If you have a problem with a particular national bank write to:

Office of the Comptroller of the Currency
Deputy Comptroller for Customer and Community Programs
Department of the Treasury
6th Floor L'Enfant Plaza
Washington, D.C. 20219
(202) 447-1600

If you have a problem with a particular State member bank write to:

Federal Reserve Board
Division of Consumer and Community Affairs
20th and C Streets, N.W.
Washington, D.C. 20551
(202) 452-3693

If you have a problem with a particular non-member insured bank, or if you are uncertain of your bank's chartering (State or national), write to:

Federal Deposit Insurance Corporation
Office of Consumer Compliance Programs
550 17th Street, N.W.
Washington, D.C. 20429
(202) 389-4353 (District of Columbia)
(860) 424-5485 (All States)

If you have a problem with a particular savings institution insured by the Federal Savings & Loan Insurance Corporation and member of the Federal Home Loan Bank System write to:

Federal Home Loan Bank Board
Department of Consumer and Civil Rights
Office of Examination and Supervision
Washington, D.C. 20552
(202) 377-6237

If you have a problem with a Federal credit union write to:
National Credit Union Administration
Office of Consumer Affairs
1776 G Street, N.W.
Washington, D.C. 20456
(202) 357-1080

Many of these Federal agencies have regional offices. Check your local telephone book under United States Government to see if there is a regional office near you.

GLOSSARY

Actuarial Method: A method of computing refunds of finance charges to consumers who prepay their loans. The method computes the exact amount of the refund.

Adjusted Balance Method: A method used to compute finance charges on a credit account based on the unpaid balance at the end of the billing period.

Annual Membership Fee: A flat charge for the annual use of a credit card, regardless of how often it is used, or the balance on the account.

Annual Percentage Rate (APR): The cost of credit expressed as a yearly percentage rate.

Appraiser: An individual who estimates the value of property.

Automated Teller Machines (ATMs): Computer terminals located at financial institutions through which a consumer may perform a variety of banking transactions.

Average Daily Balance Method: A method of computing finance charges on a credit account based on the average unpaid balance during the billing period.

Balloon Payment: The amount which is due at the termination of an open-end lease agreement.

Bank Credit Card: A credit card issued by a financial institution which is honored at a variety of retail outlets. The most common examples are Mastercard and VISA.

Billing Cycle: The length of time between billing statement dates.

Billing Dispute: A situation in which a consumer believes that information on his or her billing statement is inaccurate.

Billing Statement: The statement, or bill, which a consumer receives on a regular basis listing purchases, credits and amount due on a credit account.

Business Day: Any day on which a financial institution is open to the public for carrying on substantially all business functions.

Card Issuer: Any business which issues credit cards.

Cash Advance: An option on some bank cards which allows the consumer to take a line of credit in cash as well as purchases.

Cash Discount: A discount offered by a merchant to a consumer who pays for purchases with cash rather than credit cards.

Certificate of Deposit (CD): A certificate representing funds on deposit with a financial institution. CDs pay a higher interest rate than passbook accounts, but the funds must be left on deposit for a specific length of time.

Check Safekeeping: The keeping of the consumer's cancelled checks by the financial institution. The consumer receives a statement listing the paid checks by check number and amount, rather than receiving the actual canceled check.

Check Truncation: (See Check Safekeeping)

Checking Account: An account offered by a financial institution whereby the consumer may withdraw funds by writing the amount to be withdrawn, who is to receive the funds, the account number, the date, and the consumer's signature on a piece of paper known as a check.

Class Action: A group of people suing the same defendant for the same reason.

Closed End Credit: Credit which is extended on a one-time basis, usually with a specified repayment schedule.

Closed End Lease: A lease agreement whereby the consumer has no obligation to the lessor for changes in the value of the leased property when it is returned at the end of the lease term.

Community Property: A legal doctrine in some States whereby all property held during a marriage is considered owned in a joint ownership by both husband and wife.

Compounding Interest: When earned interest is added to an initial deposit and then interest is calculated on that total, and so on.

Consumer Reporting Agency (credit bureau, credit agency): A business which assembles consumer credit information and other information about individuals and furnishes that information in the form of reports to others who have a legitimate need to know the information for a transaction with the consumer.

Cooling-Off Period: The three business days in which a consumer is allowed to cancel a credit transaction in which a home is used as security.

Co-signer: An individual who signs an agreement to repay credit extended to another person should that person fail to pay or default.

Credit: Buying an item now and paying for it over a period of time.

Credit Agency: (See Consumer Reporting Agency)

Credit Bureau: (See Consumer Reporting Agency)

Credit Card: A plastic card embossed with an individual's name and account number representing a line of credit.

Credit File: Information on file about an individual consumer at a consumer reporting agency.

Credit History: A consumer's past performance in repaying credit which has been extended.

Credit Report: A report made by a credit agency which contains information about a consumer's creditworthiness, credit standing and/or credit capacity.

Credit Scoring System: A system of evaluating credit applications by assigning numerical scores to various factors on a credit application which are used to decide whether to grant credit.

Credit Union: A financial institution which is owned by its members. The members must have a common bond, such as having the same employer.

Creditor: Someone who extends credit.

Creditworthy: The ability and willingness to repay credit which is extended.

Day of Deposit—Day of Withdrawal: A method of computing interest on savings accounts whereby interest is earned on the exact amount in an account each day.

Dead Days: Days at the end of a period when no interest is paid on a savings account.

Debit Cards: A card which allows payment for a purchase to be taken directly from a consumer's checking or savings account, rather than being billed to the consumer's credit account.

Debt Collector: Someone who is in the business of collecting unpaid debts owed to others.

Default: The failure of a debtor to comply with the terms of the credit agreement, such as by missing a payment or making only a partial payment on a loan.

Delinquent: A credit account or loan on which payment has not been received.

Descriptive Billing: A form of billing in which the actual copies of the charge slips are not returned to the consumer, but in which the consumer is given the date, amount, and other information regarding the transaction on the billing statement.

Dormant Account Fee: A fee imposed by financial institutions on savings or checking accounts which are inactive.

Electronic Fund Transfers (EFT): The transfer of funds from one account to another through electronic means such as an automated teller machine, telephone transfer or automatic deposit.

Finance Charge: The amount that is paid for the use of credit. The amount can include charges for granting the credit, as well as interest on the amount borrowed.

Financial Institution: A business which deals in fund management, such as a bank, savings and loan, or credit union.

First in—First Out Method: A method of computing interest on savings accounts whereby each withdrawal is deducted from the balance at the beginning of each period and then from later deposits if the beginning balance is insufficient.

Grace Days: Days at the beginning of a period when deposits made to a savings account are counted as if they were deposited on the first day of the period for purposes of calculating interest.

Individual Retirement Account (IRA): An account in which a wage earner may deposit 100 percent of earned income, or $2000, whichever is less, per year ($2,250 if spouse is unemployed). The amount deposited may be directly deducted from the consumer's taxable income for that year and may not be withdrawn without penalty until the depositor is age 59½ or more. Interest earned on such account is not taxed until the funds are withdrawn.

Insufficient Funds: The reason a bank returns a consumer's check which is written for more than the amount the consumer has on deposit in the checking account.

Interest: The money earned on funds deposited in a savings or checking account, or the amount of money paid for credit which is extended.

Investigative (consumer) Report: A report containing information on an individual's character, general reputation, life style, and other personal factors which is obtained through personal interviews with friends and/or associates of the individual involved.

Joint Account: A credit, savings, or checking account which is held by more than one person.

Judgmental System: A method of evaluating an individual's creditworthiness whereby the creditor evaluates each application individually by using his or her own judgment.

Keogh Accounts: Retirement accounts for self-employed individuals with maximum deposits of $15,000 per year. Keogh accounts have the same tax advantages and restrictions as IRAs (See Individual Retirement Accounts).

Last In—First Out Method: A method of computing interest on savings accounts whereby each withdrawal is deducted from the last deposit and then from preceding deposits if the last one was insufficient.

Lease Agreement: The contract which contains the terms agreed upon for renting property.

Lease Term: The length of time an item is leased under the lease agreement.

Leasing: A legal agreement in which property or goods are rented for a certain length of time in exchange for a certain amount of money.

Lender: A business which extends loans.

Lessee: A person who rents goods or property from another person.

Lessor: A person who owns goods or property and offers the items for rent to others.

Loan Origination Fees (points): A finance charge in the form of a fee which is paid for having the loan extended. One point is equal to one percent of the amount borrowed. Loan origination fees are most common in mortgage loans.

Low Balance Method: A method of computing interest on savings accounts whereby interest is computed on the smallest amount of money in an account during the period.

Minimum Monthly Payment: The smallest amount a consumer is required to pay for a given month on the outstanding balance on a credit account.

Negotiable Order of Withdrawal (NOW) Accounts: Checking accounts that pay interest on the amount on deposit.

Open End Credit: Credit which is extended on an on-going basis, but usually with a limit on how much may be borrowed at any one time. As payments are made the money may be reborrowed.

Open End Lease: A lease arrangement whereby the leased goods are given an estimated value at the beginning of the lease term. When the items are returned, should they be of less value than originally estimated, the lessee is obligated to pay the difference.

Passbook: A book which is issued to a consumer upon opening a savings account in which a record of all deposits, withdrawal and interest earned are posted.

Passbook Loan: A loan in which the funds in the consumers savings account is used as security. A passbook loan cannot exceed the amount of funds on deposit. These loans can often be made on savings accounts other than passbook accounts.

Personal Identification Number (PIN): A secret number assigned to a consumer to allow access to an automated teller machine or other electronic fund transfer device.

Point of Sale Terminal (POS): A computer located at a retail outlet which allows for the electronic transfer of funds from a consumer's account to the merchant's account upon the purchase of an item.

Points: (See Loan Origination Fees)

Pre-Authorized Transfers: The electronic transfer of funds to and from a consumer's account on a regular basis. Such transfers may be either deposits, such as paychecks or pension funds, or withdrawals, such as the automatic payment of mortgages.

Pre-Payment Penalty: A charge which is imposed for paying off a loan before the due date.

Previous Balance Method: A method of computing finance charges on a credit account based on the unpaid balance at the beginning of the billing period.

Revolving Charge Account: A credit account (usually provided by stores) which may be used repeatedly up to a specified credit limit and which allows either partial or total payments to be made. A finance charge is levied on the outstanding balance. (See Open End Credit)

Rule of 78: A method of computing rebates of finance charges on loans that are paid off ahead of time. This method always gives the consumer a lower rebate than the actuarial method.

Savings Account: An account offered by financial institutions whereby a consumer deposits funds and is paid interest on those funds by the financial institution.

Security: Something of value owned by the consumer which acts as collateral to a lender should the borrower default on a loan. Should the consumer default on the loan, the lender has the right to take the security.

Share Draft Accounts: The credit union equivalent to NOW accounts.

Shares: The amount of funds a consumer has on deposit in a credit union.

Statement of Dispute: A written notice by a consumer sent to a creditor to inform the creditor that the consumer believes there is an error on the consumer's billing statement.

Statement Savings Account: A savings plan whereby the financial institution sends the consumer a statement in the mail listing deposits, withdrawals and interest earned.

Surcharge: An additional fee which is added to the cost of an item.

Travel and Entertainment Card: A type of credit card which is most often accepted at hotels, restaurants and for train or airplane fares. Travel and entertainment accounts usually must be paid in full every billing cycle. An annual fee is usually charged for use of a travel and entertainment card.

Uncollected Funds: Checks which are written on funds deposited in the form of a check in the checking account before the deposited check cleared, or was honored.

Variable Rate: An interest rate which varies according to an index in the loan agreement.

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APPENDIX

This appendix contains the complete text of all consumer credit protection legislation enacted by Congress. The laws referred to in the text, Truth in Lending, Fair Credit Billing, Consumer Leasing, Equal Credit Opportunity, Electronic Fund Transfer, and Fair Debt Collection Practices Acts, are all in the Appendix as they were in effect on February 1, 1983.

CONSUMER CREDIT PROTECTION ACT

(Original enactment, Public Law 90-321, May 29, 1968)

(As of February 1, 1983)

Title	Subject
I	Truth in Lending: Chapter 1—General Provisions. Chapter 2—Credit Transactions. Chapter 3—Credit Advertising. Chapter 4—Credit Billing. Chapter 5—Consumer Leases.
II	Extortionate Credit Transactions.
III	Restrictions on Garnishment.
IV	National Commission on Consumer Finance.
V	General Provision.
VI	Fair Credit Reporting.
VII	Equal Credit Opportunity.
VIII	Debt Collection Practices.
IX	Electronic Fund Transfers.

LEGISLATIVE HISTORY OF THE CONSUMER CREDIT PROTECTION ACT

Title	Subject	Legislative History
I	Truth in Lending	Public Law 90-321, enacted May 29, 1968, amended Oct. 26, 1970, Oct. 28, 1974, Feb. 27, 1976, Mar. 23, 1976, Mar. 31, 1980, July 27, 1981, Dec. 26, 1981 and Oct. 15, 1982.
II	Extortionate Credit Transactions.	Public Law 90-321, enacted May 29, 1968, amended Oct. 15, 1970.
III	Restrictions on Garnishments.	Public Law 90-321, enacted May 29, 1968, amended, May 23, 1977 and Nov. 6, 1978.
IV	National Commission on Consumer Finance.	Public Law 90-321, enacted May 29, 1968.
V	General Provisions	Public Law 90-321, enacted May 29, 1968, amended October 26, 1970.
VI	Fair Credit Reporting	Public Law 91-508, enacted October 26, 1970, amended Nov. 6, 1978.
VII	Equal Credit Opportunity.	Public Law 93-495, enacted October 28, 1974, amended Mar. 23, 1976.
VIII	Debt Collection Practices.	Public Law 95-109, enacted Sept. 20, 1977.
IX	Electronic Fund Transfers.	Public Law 95-630, enacted Nov. 10, 1978.

CONSUMER CREDIT PROTECTION ACT

CONSUMER CREDIT PROTECTION ACT

(82 Stat. 146; 15 U.S.C. 1601 et seq.)

AN ACT To safeguard the consumer in connection with the utilization of credit by requiring full disclosure of the terms and conditions of finance charges in credit transactions or in offers to extend credit; by restricting the garnishment of wages; and by creating the National Commission on Consumer Finance to study and make recommendations on the need for further regulation of the consumer finance industry; and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

§ 1. Short title of entire Act

This Act may be cited as the Consumer Credit Protection Act.

TITLE I—CONSUMER CREDIT COST DISCLOSURE

Chapter	Section
1. General Provisions	101
2. Credit Transactions	121
3. Credit Advertising	141
4. Credit Billing	161
5. Consumer Leases	181

CHAPTER 1—GENERAL PROVISIONS

Sec.
101. Short title.
102. Findings and declaration of purpose.
103. Definitions and rules of construction.
104. Exempted transactions.
105. Regulations.
106. Determination of finance charge.
107. Determination of annual percentage rate.
108. Administrative enforcement.
109. Views of other agencies.
110. [Repealed.]
111. Effect on other laws.
112. Criminal liability for willful and knowing violation.
113. Effect on governmental agencies.
114. Reports by Board and Attorney General.
115. [Repealed.]

§ 101. Short title

This title may be cited as the Truth in Lending Act. (15 U.S.C. 1601 note)

§ 102. Findings and declaration of purpose

(a) The Congress finds that economic stabilization would be enhanced and the competition among the various financial institu-

tions and other firms engaged in the extension of consumer credit would be strengthened by the informed use of credit. The informed use of credit results from an awareness of the cost thereof by consumers. It is the purpose of this title to assure a meaningful disclosure of credit terms so that the consumer will be able to compare more readily the various credit terms available to him and avoid the uninformed use of credit; and to protect the consumer against inaccurate and unfair credit billing and credit card practices.

(b) The Congress also finds that there has been a recent trend toward leasing automobiles and other durable goods for consumer use as an alternative to installment credit sales and that these leases have been offered without adequate cost disclosures. It is the purpose of this title to assure a meaningful disclosure of the terms of leases of personal property for personal, family, or household purposes so as to enable the lessee to compare more readily the various lease terms available to him, limit balloon payments in consumer leasing, enable comparison of lease terms with credit terms where appropriate, and to assure meaningful and accurate disclosures of lease terms in advertisements. (15 U.S.C. 1601)

§ 103. Definitions and rules of construction

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(c) The term "organization" means a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(d) The term "person" means a natural person or an organization.

(e) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debt and defer its payment.

(f) The term "creditor" refers only to a person who both (1) regularly extends, whether in connection with loans, sales of property or services, or otherwise, consumer credit which is payable by agreement in more than four installments or for which the payment of a finance charge is or may be required, and (2) is the person to whom the debt arising from the consumer credit transaction is initially payable on the face of the evidence of indebtedness or, if there is no such evidence of indebtedness, by agreement. Notwithstanding the preceding sentence, in the case of an open-end credit plan involving a credit card, the card issuer and any person who honors the credit card and offers a discount which is a finance charge are creditors. For the purpose of the requirements imposed under chapter 4 and sections 127(a)(5), 127(a)(6), 127(a)(7), 127(b)(1), 127(b)(2), 127(b)(3), 127(b)(8), and 127(b)(10) of chapter 2 of this title, the term "creditor" shall also include card issuers whether or not the amount due is payable by agreement in more than four installments or the payment of a finance charge is or may be required, and the Board shall, by regulation, apply these requirements to such card issuers, to the extent appropriate, even though the requirements are by their terms applicable only to creditors offering open-end credit plans.

(g) The term "credit sale" refers to any sale in which the seller is a creditor. The term includes any contract in the form of a bailment or lease if the bailee or lessee contracts to pay as compensation for use a sum substantially equivalent to or in excess of the aggregate value of the property and services involved and it is agreed that the bailee or lessee will become, or for no other or a nominal consideration has the option to become, the owner of the property upon full compliance with his obligations under the contract.

(h) The adjective "consumer", used with reference to a credit transaction, characterizes the transaction as one in which the party to whom credit is offered or extended is a natural person, and the money, property, or services which are the subject of the transaction are primarily for personal, family, or household purposes.

(i) The term "open end credit plan" means a plan under which the creditor reasonably contemplates repeated transactions, which prescribes the terms of such transactions, and which provides for a finance charge which may be computed from time to time on the outstanding unpaid balance. A credit plan which is an open end credit plan within the meaning of the preceding sentence is an open end credit plan even if credit information is verified from time to time.

(j) The term "adequate notice", as used in section 133, means a printed notice to a cardholder which sets forth the pertinent facts clearly and conspicuously so that a person against whom it is to operate could reasonably be expected to have noticed it and understood its meaning. Such notice may be given to a cardholder by printing the notice on any credit card, or on each periodic statement of account, issued to the cardholder, or by any other means reasonably assuring the receipt thereof by the cardholder.

(k) The term "credit card" means any card, plate, coupon book or other credit device existing for the purpose of obtaining money, property, labor, or services on credit.

(l) The term "accepted credit card" means any credit card which the cardholder has requested and received or has signed or has used, or authorized another to use, for the purpose of obtaining money, property, labor, or services on credit.

(m) The term "cardholder" means any person to whom a credit card is issued or any person who has agreed with the card issuer to pay obligations arising from the issuance of a credit card to another person.

(n) The term "card issuer" means any person who issues a credit card, or the agent of such person with respect to such card.

(o) The term "unauthorized use", as used in section 133, means a use of a credit card by a person other than the cardholder who does not have actual, implied, or apparent authority for such use and from which the cardholder receives no benefit.

(p) The term "discount" as used in section 167 means a reduction made from the regular price. The term "discount" as used in section 167 shall not mean a surcharge.

(q) The term "surcharge" as used in section 103 and section 167 means any means of increasing the regular price to a cardholder

which is not imposed upon customers paying by cash, check, or similar means.

(r) The term "State" refers to any State, the Commonwealth of Puerto Rico, the District of Columbia, and any territory or possession of the United States.

(s) The term "agricultural purposes" includes the production, harvest, exhibition, marketing, transportation, processing, or manufacture of agricultural products by a natural person who cultivates, plants, propagates, or nurtures those agricultural products, including but not limited to the acquisition of farmland, real property with a farm residence, and personal property and services used primarily in farming.

(t) The term "agricultural products" includes agricultural, horticultural, viticultural, and dairy products, livestock, wildlife, poultry, bees, forest products, fish and shellfish, and any products thereof, including processed and manufactured products, and any and all products raised or produced on farms and any processed or manufactured products thereof.

(u) The term "material disclosures" means the disclosure, as required by this title, of the annual percentage rate, the method of determining the finance charge and the balance upon which a finance charge will be imposed, the amount of the finance charge, the amount to be financed, the total of payments, the number and amount of payments, and the due dates or periods of payments scheduled to repay the indebtedness.

(v) The term "dwelling" means a residential structure or mobile home which contains one to four family housing units, or individual units of condominiums or cooperatives.

(w) The term "residential mortgage transaction" means a transaction in which a mortgage, deed of trust, purchase money security interest arising under an installment sales contract, or equivalent consensual security interest is created or retained against the consumer's dwelling to finance the acquisition or initial construction of such dwelling.

(x) As used in this section and section 167, the term "regular price" means the tag or posted price charged for the property or service if a single price is tagged or posted, or the price charged for the property or service when payment is made by use of an open-end credit plan or a credit card if either (1) no price is tagged or posted, or (2) two prices are tagged or posted, one of which is charged when payment is made by use of an open-end credit plan or a credit card and the other when payment is made by use of cash, check, or similar means. For purposes of this definition, payment by check, draft, or other negotiable instrument which may result in the debiting of an open-end credit plan or a credit cardholder's open-end account shall not be considered payment made by use of the plan or the account.

(y) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question.

(z) The disclosure of an amount or percentage which is greater than the amount or percentage required to be disclosed under this title does not in itself constitute a violation of this title. (15 U.S.C. 1602)

§ 104. Exempted transactions

This title does not apply to the following:

(1) Credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations.

(2) Transactions in securities or commodities accounts by a broker-dealer registered with the Securities and Exchange Commission.

(3) Credit transactions, other than those in which a security interest is or will be acquired in real property, or in personal property used or expected to be used as the principal dwelling of the consumer, in which the total amount financed exceeds $25,000.

(4) Transactions under public utility tariffs, if the Board determines that a State regulatory body regulates the charges for the public utility services involved, the charges for delayed payment, and any discount allowed for early payment. (15 U.S.C. 1603)

(5) Credit transactions primarily for agricultural purposes in which the total amount to be financed exceeds $25,000.

(6) [1] Loans made, insured, or guaranteed pursuant to a program authorized by title IV of the Highr Education Act of 1965 (20 U.S.C. 1070 et seq.).

§ 105. Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

(b) The Board shall publish model disclosure forms and clauses for common transactions to facilitate compliance with the disclosure requirements of this title and to aid the borrower or lessee in understanding the transaction by utilizing readily understandable language to simplify the technical nature of the disclosures. In devising such forms, the Board shall consider the use by creditors or lessors of data processing or similar automated equipment. Nothing in this title may be construed to require a creditor or lessor to use any such model form or clause prescribed by the Board under this section. A creditor or lessor shall be deemed to be in compliance with the disclosure provisions of this title with respect to other than numerical disclosures if the creditor or lessor (1) uses any appropriate model form or clause as published by the Board, or (2) uses any such model form or clause and changes it by (A) deleting any information which is not required by this title, or (B) rearranging the format, if in making such deletion or rearranging the

[1] This paragraph shall be effective both with respect to loans made prior to and after October 15, 1982

format, the creditor or lessor does not affect the substance, clarity, or meaningful sequence of the disclosure.

(c) Model disclosure forms and clauses shall be adopted by the Board after notice duly given in the Federal Register and an opportunity for public comment in accordance with section 553 of title 5, United States Code.

(d) Any regulation of the Board, or any amendment or interpretation thereof, requiring any disclosure which differs from the disclosures previously required by this chapter, chapter 4, or chapter 5, or by any regulation of the Board promulgated thereunder shall have an effective date of that October 1 which follows by at least six months the date of promulgation, except that the Board may at its discretion take interim action by regulation, amendment, or interpretation to lengthen the period of time permitted for creditors or lessors to adjust their forms to accommodate new requirements or shorten the length of time for creditors or lessors to make such adjustments when it makes a specific finding that such action is necessary to comply with the findings of a court or to prevent unfair or deceptive disclosure practices. Notwithstanding the previous sentence, any creditor or lessor may comply with any such newly promulgated disclosure requirements prior to the effective date of the requirements. (15 U.S.C. 1604)

§ 106. Determination of finance charge

(a) Except as otherwise provided in this section, the amount of the finance charge in connection with any consumer credit transaction shall be determined as the sum of all charges, payable directly or indirectly by the person to whom the credit is extended, and imposed directly or indirectly by the creditor as an incident to the extension of credit. The finance charge does not include charges of a type payable in a comparable cash transaction. Examples of charges which are included in the finance charge include any of the following types of charges which are applicable.

(1) Interest, time price differential, and any amount payable under a point, discount, or other system of additional charges.

(2) Service or carrying charge.

(3) Loan fee, finder's fee, or similar charge.

(4) Fee for an investigation or credit report.

(5) Premium or other charge for any guarantee or insurance protecting the creditor against the obligor's default or other credit loss.

(b) Charges or premiums for credit life, accident, or health insurance written in connection with any consumer credit transaction shall be included in the finance charge unless:

(1) the coverage of the debtor by the insurance is not a factor in the approval by the creditor of the extension of credit, and this fact is clearly disclosed in writing to the person applying for or obtaining the extension of credit; and

(2) in order to obtain the insurance in connection with the extension of credit, the person to whom the credit is extended must give specific affirmative written indication of his desire to do so after written disclosure to him of the cost thereof.

(c) Charges or premiums for insurance, written in connection with any consumer credit transaction, against loss of or damage to

property or against liability arising out of the ownership or use of property, shall be included in the finance charge unless a clear and specific statement in writing is furnished by the creditor to the person to whom the credit is extended, setting forth the cost of the insurance if obtained from or through the creditor, and stating that the person to whom the credit is extended may choose the person through which the insurance is to be obtained.

(d) If any of the following items is itemized and disclosed in accordance with the regulations of the Board in connection with any transaction, then the creditor need not include that item in the computation of the finance charge with respect to that transaction:

(1) Fees and charges prescribed by law which actually are or will be paid to public officials for determining the existence of or for perfecting or releasing or satisfying any security related to the credit transaction.

(2) The premium payable for any insurance in lieu of perfecting any security interest otherwise required by the creditor in connection with the transaction, if the premium does not exceed the fees and charges described in paragraph (1) which would otherwise be payable.

Paragraphs (3) and (4) cease to be effective on April 1, 1982.

(3) Taxes.

(4) Any other type of charge which is not for credit and the exclusion of which from the finance charge is approved by the Board by regulation.

(e) The following items, when charged in connection with any extension of credit secured by an interest in real property, shall not be included in the computation of the finance charge with respect to that transaction:

(1) Fees or premiums for title examination, title insurance, or similar purposes.

(2) Fees for preparation of a deed, settlement statement, or other documents.

(3) Escrows for future payments of taxes and insurance.

(4) Fees for notarizing deeds and other documents.

(5) Appraisal fees.

(6) Credit reports. (15 U.S.C. 1605)

§ 107. Determination of annual percentage rate

(a) The annual percentage rate applicable to any extension of consumer credit shall be determined, in accordance with the regulations of the Board,

(1) in the case of any extension of credit other than under an open end credit plan, as

(A) that nominal annual percentage rate which will yield a sum equal to the amount of the finance charge when it is applied to the unpaid balances of the amount financed, calculated according to the actuarial method of allocating payments made on a debt between the amount financed and the amount of the finance charge, pursuant to which a payment is applied first to the accumulated finance charge and the balance is applied to the unpaid amount financed; or

(B) the rate determined by any method prescribed by the Board as a method which materially simplifies computation while retaining reasonable accuracy as compared with the rate determined under subparagraph (A).[1]

(2) in the case of any extension of credit under an open end credit plan, as the quotient (expressed as a percentage) of the total finance charge for the period to which it relates divided by the amount upon which the finance charge for that period is based, multiplied by the number of such periods in a year.

(b) Where a creditor imposes the same finance charge for balances within a specified range, the annual percentage rate shall be computed on the median balance within the range, except that if the Board determines that a rate so computed would not be meaningful, or would be materially misleading, the annual percentage rate shall be computed on such other basis as the Board may by regulation require.

(c) The disclosure of an annual percentage rate is accurate for the purpose of this title if the rate disclosed is within a tolerance not greater than one-eighth of 1 per centum more or less than the actual rate or rounded to the nearest one-fourth of 1 per centum. The Board may allow a greater tolerance to simplify compliance where irregular payments are involved.

(d) The Board may authorize the use of rate tables or charts which may provide for the disclosure of annual percentage rates which vary from the rate determined in accordance with subsection (a)(1)(A) by not more than such tolerances as the Board may allow. The Board may not allow a tolerance greater than 8 per centum of that rate except to simplify compliance where irregular payments are involved.

(e) In the case of creditors determining the annual percentage rate in a manner other than as described in subsection (d), the Board may authorize other reasonable tolerances.

Effective April 1, 1982, subsection (f) is repealed.

(f) Prior to January 1, 1971, any rate required under this title to be disclosed as a percentage rate may, at the option of the creditor, be expressed in the form of the corresponding ratio of dollars per hundred dollars. (15 U.S.C. 1606)

§ 108. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under

(1) section 8 of the Federal Deposit Insurance Act, in the case of

(A) national banks, by the Comptroller of the Currency.

(B) member banks of the Federal Reserve System (other than national banks) by the Board.

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

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[1] So in original. Probably should be ", and".

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(4) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(5) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(6) the Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land bank association, Federal intermediate credit bank, or production credit association.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title.

(e)(1) In carrying out its enforcement activities under this section, each agency referred to in subsection (a) or (c), in cases where an annual percentage rate or finance charge was inaccurately disclosed, shall notify the creditor of such disclosure error and is authorized in accordance with the provisions of this subsection to require the creditor to make an adjustment to the account of the person to whom credit was extended, to assure that such person will not be required to pay a finance charge in excess of the fi-

nance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower. For the purposes of this subsection, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in determining whether a disclosure error has occurred and in calculating any adjustment, (A) each agency shall apply (i) with respect to the annual percentage rate, a tolerance of one-quarter of 1 percent more or less than the actual rate, determined without regard to section 107(c) of this title, and (ii) with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerance provided under this subsection for the annual percentage rate; except that (B) with respect to transactions consummated after two years following the effective date of section 608 of the Truth in Lending Simplification and Reform Act, each agency shall apply (i) for transactions that have a scheduled amortization of ten years or less, with respect to the annual percentage rate, a tolerance not to exceed one-quarter of 1 percent more or less than the actual rate, determined without regard to section 107(c) of this title, but in no event a tolerance of less than the tolerances allowed under section 107(c), (ii) for transactions that have a scheduled amortization of more than ten years, with respect to the annual percentage rate, only such tolerances as are allowed under section 107(c) of this title, and (iii) for all transactions, with respect to the finance charge, a corresponding numerical tolerance as generated by the tolerances provided under this subsection for the annual percentage rate.

(2) Each agency shall require such an adjustment when it determines that such disclosure error resulted from (A) a clear and consistent pattern or practice of violations, (B) gross negligence, or (C) a willful violation which was intended to mislead the person to whom the credit was extended. Notwithstanding the preceding sentence, except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, an agency need not require such an adjustment if it determines that such disclosure error—

(A) resulted from an error involving the disclosure of a fee or charge that would otherwise be excludable in computing the finance charge, including but not limited to violations involving the disclosures described in sections 106(b), (c) and (d) of this title, in which event the agency may require such remedial action as it determines to be equitable, except that for transactions consummated after two years after the effective date of section 608 of the Truth in Lending Simplification and Reform Act, such an adjustment shall be ordered for violations of section 106(b);

(B) involved a disclosed amount which was 10 per centum or less of the amount that should have been disclosed and (i) in cases where the error involved a disclosed finance charge, the annual percentage rate was disclosed correctly, and (ii) in cases where the error involved a disclosed annual percentage rate, the finance charge was disclosed correctly; in which event the agency may require such adjustment as it determines to be equitable;

(C) involved a total failure to disclose either the annual percentage rate or the finance charge, in which event the agency may require such adjustment as it determines to be equitable; or

(D) resulted from any other unique circumstance involving clearly technical and nonsubstantive disclosure violations that do not adversely affect information provided to the consumer and that have not misled or otherwise deceived the consumer.

In the case of other such disclosure errors, each agency may require such an adjustment.

(3) Notwithstanding paragraph (2), no adjustment shall be ordered (A) if it would have a significantly adverse impact upon the safety or soundness of the creditor, but in any such case, the agency may require a partial adjustment in an amount which does not have such an impact, except that with respect to any transaction consummated after the effective date of section 608 of the Truth in Lending Simplification and Reform Act, the agency shall require the full adjustment, but permit the creditor to make the required adjustment in partial payments over an extended period of time which the agency considers to be reasonable, (B) if the amount of the adjustment would be less that $1, except that if more than one year has elapsed since the date of the violation, the agency may require that such amount be paid into the Treasury of the United States, or (C) except where such disclosure error resulted from a willful violation which was intended to mislead the person to whom credit was extended, in the case of an open-end credit plan, more than two years after the violation, or in the case of any other extension of credit, as follows:

(i) with respect to creditors that are subject to examination by the agencies referred to in paragraphs (1) through (3) of section 108(a) of this title, except in connection with violations arising from practices identified in the current examination and only in connection with transactions that are consummated after the date of the immediately preceding examination, except that where practices giving rise to violations identified in earlier examinations have not been corrected, adjustments for those violations shall be required in connection with transactions consummated after the date of the examination in which such practices were first identified;

(ii) with respect to creditors that are not subject to examination by such agencies, except in connection with transactions that are consummated after May 10, 1978; and

(iii) in no event after the later of (I) the expiration of the life of the credit extension, or (II) two years after the agreement to extend credit was consummated.

(4)(A) Notwithstanding any other provision of this section, an adjustment under this subsection may be required by an agency referred to in subsection (a) or (c) only by an order issued in accordance with cease and desist procedures provided by the provision of law referred to in such subsections.

(B) In the case of an agency which is not authorized to conduct cease and desist proceedings, such an order may be issued after an agency hearing on the record conducted at least thirty but not more than sixty days after notice of the alleged violation is served

on the creditor. Such a hearing shall be deemed to be a hearing which is subject to the provisions of section 8(h) of the Federal Deposit Insurance Act and shall be subject to judicial review as provided therein.

(5) Except as otherwise specifically provided in this subsection and notwithstanding any provision of law referred to in subsection (a) or (c), no agency referred to in subsection (a) or (c) may require a creditor to make dollar adjustments for errors in any requirements under this title, except with regard to the requirements of section 165.

(6) A creditor shall not be subject to an order to make an adjustment, if within sixty days after discovering a disclosure error, whether pursuant to a final written examination report or through the creditor's own procedures, the creditor notifies the person concerned of the error and adjusts the account so as to assure that such person will not be required to pay a finance charge in excess of the finance charge actually disclosed or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(7) Notwithstanding the second sentence of subsection (e)(1), subsection (e)(3)(C)(i), and subsection (e)(3)(C)(ii), each agency referred to in subsection (a) or (c) shall require an adjustment for an annual percentage rate disclosure error that exceeds a tolerance of one quarter of one percent less than the actual rate, determined without regard to section 107(c) of this title, with respect to any transaction consummated between January 1, 1977, and the effective date of section 608 of the Truth in Lending Simplification and Reform Act. (15 U.S.C. 1607)

§ 109. Views of other agencies

In the exercise of its functions under this title, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of creditors subject to this title. (15 U.S.C. 1608)

§ 110. [Repealed by the Act of March 23, 1976, Public Law 94-239. (15 U.S.C. 1609)]

§ 111. Effect on other laws

Until April 1, 1982, subsection (a) will read as follows:

(a) This title does not annul, alter, or affect, or exempt any creditor from complying with, the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this title or regulations thereunder, and then only to the extent of the inconsistency.

Effective April 1, 1982, subsection (a) will read as follows:

(a)(1) Chapters 1, 2, and 3 do not annul, alter, or affect the laws of any State relating to the disclosure of information in connection with credit transactions, except to the extent that those laws are inconsistent with the provisions of this title, and then only to the extent of the inconsistency. Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of

the Board, the Board shall determine whether any such inconsistency exists. If the Board determines that a State-required disclosure is inconsistent, creditors located in that State may not make disclosures using the inconsistent term or form, and shall incur no liability under the law of that State for failure to use such term or form, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(2) Upon its own motion or upon the request of any creditor, State, or other interested party which is submitted in accordance with procedures prescribed in regulations of the Board, the Board shall determine whether any disclosure required under the law of any State is substantially the same in meaning as a disclosure required under this title. If the Board determines that a State-required disclosure is substantially the same in meaning as a disclosure required by this title, then creditors located in that State may make such disclosure in compliance with such State law in lieu of the disclosure required by this title, except that the annual percentage rate and finance charge shall be disclosed as required by section 122.

(b) This title does not otherwise annul, alter or affect in any manner the meaning, scope or applicability of the laws of any State, including, but not limited to, laws relating to the types, amounts or rates of charges, or any element or elements of charges, permissible under such laws in connection with the extension or use of credit, nor does this title extend the applicability of those laws to any class of persons or transactions to which they would not otherwise apply.

(c) In any action or proceeding in any court involving a consumer credit sale, the disclosure of the annual percentage rate as required under this title in connection with that sale may not be received as evidence that the sale was a loan or any type of transaction other than a credit sale.

(d) Except as specified in sections 125, 130, and 166, this title and the regulations issued thereunder do not affect the validity or enforceability of any contract or obligation under State or Federal law. (15 U.S.C. 1610)

§ 112. Criminal liability for willful and knowing violation

Whoever willfully and knowingly

(1) gives false or inaccurate information or fails to provide information which he is required to disclose under the provisions of this title or any regulation issued thereunder,

(2) uses any chart or table authorized by the Board under section 107 in such a manner as to consistently understate the annual percentage rate determined under section 107(a)(1)(A), or

(3) otherwise fails to comply with any requirement imposed under this title,

shall be fined not more than $5,000 or imprisoned not more than one year, or both. (15 U.S.C. 1611)

§ 113. Effect on governmental agencies

(a) Any department or agency of the United States which administers a credit program in which it extends, insures, or guarantees consumer credit and in which it provides instruments to a creditor which contain any disclosures required by this title shall, prior to the issuance or continued use of such instruments, consult with the Board to assure that such instruments comply with this title.

(b) No civil or criminal penalty provided under this title for any violation thereof may be imposed upon the United States or any department or agency thereof, or upon any State or political subdivision thereof, or any agency of any State or political subdivision.

(c) A creditor participating in a credit program administered, insured, or guaranteed by any department or agency of the United States shall not be held liable for a civil or criminal penalty under this title in any case in which the violation results from the use of an instrument required by any such department or agency.

(d) A creditor participating in a credit program administered, insured, or guaranteed by any department or agency of the United States shall not be held liable for a civil or criminal penalty under the laws of any State (other than laws determined under section 111 to be inconsistent with this title) for any technical procedural failure, such as a failure to use a specific form, to make information available at a specific place on an instrument, or to use a specific typeface, as is required by State law, which is caused by the use of an instrument required to be used by such department or agency. (15 U.S.C. 1612)

§ 114. Reports by Board and Attorney General

Each year the Board shall make a report to the Congress concerning the administration of its functions under this title, including such recommendations as the Board deems necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements imposed under this title is being achieved. (15 U.S.C. 1613)

§ 115. [Repealed. (15 U.S.C. 1614)]

CHAPTER 2—CREDIT TRANSACTIONS

Sec.

121. General requirement of disclosure.
122. Form of disclosure; additional information.
123. Exemption for State-regulated transactions.
124. Effect of subsequent occurrence.
125. Right of rescission as to certain transactions.
126. [Repealed.]
127. Open end consumer credit plans.
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129. [Repealed.]
130. Civil liability.
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§ 121. General requirement of disclosure

(a) Subject to subsection (b), a creditor or lessor shall disclose to the person who is obligated on a consumer lease or a consumer credit transaction the information required under this title. In a transaction involving more than one obligor, a creditor or lessor, except in a transaction under section 125, need not disclose to more than one of such obligors if the obligor given disclosure is a primary obligor.

(b) If a transaction involves one creditor as defined in section 103(f), or one lessor as defined in section 181(3), such creditor or lessor shall make the disclosures. If a transaction involves more than one creditor or lessor, only one creditor or lessor shall be required to make the disclosures. The Board shall by regulation specify which creditor or lessor shall make the disclosures.

(c) The Board may provide by regulation that any portion of the information required to be disclosed by this title may be given in the form of estimates where the provider of such information is not in a position to know exact information.

(d) The Board shall determine whether tolerances for numerical disclosures other than the annual percentage rate are necessary to facilitate compliance with this title, and if it determines that such tolerances are necessary to facilitate compliance, it shall by regulation permit disclosures within such tolerances. The Board shall exercise its authority to permit tolerances for numerical disclosures other than the annual percentage rate so that such tolerances are narrow enough to prevent such tolerances from resulting in misleading disclosures or disclosures that circumvent the purposes of this title. (15 U.S.C. 1631)

§ 122. Form of disclosures; additional information

(a) Information required by this title shall be disclosed clearly and conspicuously, in accordance with regulations of the Board. The terms "annual percentage rate" and "finance charge" shall be disclosed more conspicuously than other terms, data, or information provided in connection with a transaction, except information relating to the identity of the creditor. Regulations of the Board need not require that disclosures pursuant to this title be made in the order set forth in this title and, except as otherwise provided, may permit the use of terminology different from that employed in this title if it conveys substantially the same meaning.

(b) Any creditor or lessor may supply additional information or explanation with any disclosures required under chapters 4 and 5 and, except as provided in section 128(b)(1), under this chapter. (12 U.S.C. 1632)

§ 123. Exemption for State-regulated transactions

The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter, and that there is adequate provision for enforcement. (15 U.S.C. 1633)

§ 124. Effect of subsequent occurrence

If information disclosed in accordance with this chapter is subsequently rendered inaccurate as the result of any act, occurrence, or agreement subsequent to the delivery of the required disclosures, the inaccuracy resulting therefrom does not constitute a violation of this chapter. (15 U.S.C. 1634)

§ 125. Right of rescission as to certain transactions

(a) Except as otherwise provided in this section, in the case of any consumer credit transaction (including opening or increasing the credit limit for an open end credit plan) in which a security interest, including any such interest arising by operation of law, is or will be retained or acquired in any property which is used as the principal dwelling of the person to whom credit is extended, the obligor shall have the right to rescind the transaction until midnight of the third business day following the consummation of the transaction or the delivery of the information and recission forms required under this section together with a statement containing the material disclosures required under this title, whichever is later, by notifying the creditor, in accordance with regulations of the Board, of his intention to do so. The creditor shall clearly and conspicuously disclose, in accordance with regulations of the Board, to any obligor in a transaction subject to this section the rights of the obligor under this section. The creditor shall also provide, in accordance with regulations of the Board, appropriate forms for the obligor to exercise his right to rescind any transaction subject to this section.

(b) When an obligor exercises his right to rescind under subsection (a), he is not liable for any finance or other charge, and any security interest given by the obligor, including any such interest arising by operation of law, becomes void upon such a rescission. Within 20 days after receipt of a notice of rescission, the creditor shall return to the obligor any money or property given as earnest money, downpayment, or otherwise, and shall take any action necessary or appropriate to reflect the termination of any security interest created under the transaction. If the creditor has delivered any property to the obligor, the obligor may retain possession of it. Upon the performance of the creditor's obligations under this section, the obligor shall tender the property to the creditor, except that if return of the property in kind would be impracticable or inequitable, the obligor shall tender its reasonable value. Tender shall be made at the location of the property or at the residence of the obligor, at the option of the obligor. If the creditor does not take possession of the property within 20 days after tender by the obligor, ownership of the property vests in the obligor without obligation on his part to pay for it. The procedures prescribed by this subsection shall apply except when otherwise ordered by a court.

(c) Notwithstanding any rule of evidence, written acknowledgment of receipt of any disclosures required under this title by a person to whom information, forms, and a statement is required to be given pursuant to this section does no more than create a rebuttable presumption of delivery thereof.

(d) The Board may, if it finds that such action is necessary in order to permit homeowners to meet bona fide personal financial

emergencies, prescribe regulations authorizing the modification or waiver of any rights created under this section to the extent and under the circumstances set forth in those regulations.

(e)(1) This section does not apply to—

(A) a residential mortgage transaction as defined in section 103(w);

(B) a transaction which constitutes a refinancing or consolidation (with no new advances) of the principal balance then due and any accrued and unpaid finance charges of an existing extension of credit by the same creditor secured by an interest in the same property;

(C) a transaction in which an agency of a State is the creditor; or

(D) advances under a preexisting open end credit plan if a security interest has already been retained or acquired and such advances are in accordance with a previously established credit limit for such plan.

(2) The provisions of paragraph (1)(D) shall cease to be effective 3 years after the effective date of the Truth in Lending Simplification and Reform Act.

(f) An obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the sale of the property, whichever occurs first, notwithstanding the fact that the information and forms required under this section or any other disclosures required under this chapter have not been delivered to the obligor, except that if (1) any agency empowered to enforce the provisions of this title institutes a proceeding to enforce the provisions of this section within three years after the date of consummation of the transaction, (2) such agency finds a violation of section 125, and (3) the obligor's right to rescind is based in whole or in part on any matter involved in such proceeding, then the obligor's right of rescission shall expire three years after the date of consummation of the transaction or upon the earlier sale of the property, or upon the expiration of one year following the conclusion of the proceeding, or any judicial review or period for judicial review thereof, whichever is later.

(g) In any action in which it is determined that a creditor has violated this section, in addition to rescission the court may award relief under section 130 for violations of this title not relating to the right to rescind. (15 U.S.C. 1635)

§ 126. [Repealed. (15 U.S.C. 1636)]

§ 127. Open end consumer credit plans

(a) Before opening any account under an open end consumer credit plan, the creditor shall disclose to the person to whom credit is to be extended each of the following items, to the extent applicable:

(1) The conditions under which a finance charge may be imposed, including the time period (if any) within which any credit extended may be repaid without incurring a finance charge, except that the creditor may, at his election and without disclosure, impose no such finance charge if payment is re-

ceived after the termination of such time period. If no such time period is provided, the creditor shall disclose such fact.

(2) The method of determining the balance upon which a finance charge will be imposed.

(3) The method of determining the amount of the finance charge, including any minimum or fixed amount imposed as a finance charge.

(4) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and the corresponding nominal annual percentage rate determined by mutliplying the periodic rate by the number of periods in a year.

(5) Identification of other charges which may be imposed as part of the plan, and their method of computation, in accordance with regulations of the Board.

(6) In cases where the credit is or will be secured, a statement that a security interest has been or will be taken in (A) the property purchased as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(7) A statement, in a form prescribed by regulations of the Board of the protection provided by sections 161 and 170 to an obligor and the creditor's responsibilities under sections 162 and 170. With respect to one billing cycle per calendar year, at intervals of not less than six months or more than eighteen months, the creditor shall transmit such statement to each obligor to whom the creditor is required to transmit a statement pursuant to section 127(b) for such billing cycle.

(b) The creditor of any account under an open end consumer credit plan shall transmit to the obligor, for each billing cycle at the end of which there is an outstanding balance in that account or with respect to which a finance charge is imposed, a statement setting forth each of the following items to the extent applicable:

(1) The outstanding balance in the account at the beginning of the statement period.

(2) The amount and date of each extension of credit during the period, and a brief identification, on or accompanying the statement of each extension of credit in a form prescribed by the Board sufficient to enable the obligor either to identify the transaction or to relate it to copies of sales vouchers or similar instruments previously furnished, except that a creditor's failure to disclose such information in accordance with this paragraph shall not be deemed a failure to comply with this chapter or this title if (A) the creditor maintains procedures reasonably adapted to procure and provide such information, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 161. In lieu of complying with the requirements of the previous sentence, in the case of any transaction in which the creditor and seller are the same person, as defined by the Board, and such person's open end credit plan has fewer than 15,000 accounts, the creditor may elect to provide only the amount and date of each extension of credit during the period and the seller's name and location where the

transaction took place if (A) a brief identification of the transaction has been previously furnished, and (B) the creditor responds to and treats any inquiry for clarification or documentation as a billing error and an erroneously billed amount under section 161.

(3) The total amount credited to the account during the period.

(4) The amount of any finance charge added to the account during the period, itemized to show the amounts, if any, due to the application of percentage rates and the amount, if any, imposed as a minimum or fixed charge.

(5) Where one or more periodic rates may be used to compute the finance charge, each such rate, the range of balances to which it is applicable, and, unless the annual percentage rate (determined under section 107(a)(2)) is required to be disclosed pursuant to paragraph (6), the corresponding nominal annual percentage rate determined by mutliplying the periodic rate by the number of periods in a year.

(6) Where the total finance charge exceeds 50 cents for a monthly or longer billing cycle, or the pro rata part of 50 cents for a billing cycle shorter than monthly, the total finance charge expressed as an annual percentage rate (determined under section 107(a)(2)), except that if the finance charge is the sum of two or more products of a rate times a portion of the balance, the creditor may, in lieu of disclosing a single rate for the total charge, disclose each such rate expressed as an annual percentage rate, and the part of the balance to which it is applicable.

(7) The balance on which the finance charge was computed and a statement of how the balance was determined. If the balance is determined without first deducting all credits during the period, that fact and the amount of such payments shall also be disclosed.

(8) The outstanding balance in the account at the end of the period.

(9) The date by which or the period (if any) within which, payment must be made to avoid additional finance charges, except that the creditor may, at his election and without disclosure, impose no such additional finance charge if payment is received after such date or the termination of such period.

(10) The address to be used by the creditor for the purpose of receiving billing inquiries from the obligor. (15 U.S.C. 1637)

§ 128. Consumer credit not under open end credit plans

(a) For each consumer credit transaction other than under an open end credit plan, the creditor shall disclose each of the following items, to the extent applicable:

(1) The identity of the creditor required to make disclosure.

(2)(A) The "amount financed", using that term, which shall be the amount of credit of which the consumer has actual use. This amount shall be computed as follows, but the computations need not be disclosed and shall not be disclosed with the disclosures conspicuously segregated in accordance with subsection (b)(1):

(i) take the principal amount of the loan or the cash price less downpayment and trade-in;

(ii) add any charges which are not part of the finance charge or of the principal amount of the loan and which are financed by the consumer, including the cost of any items excluded from the finance charge pursuant to section 106; and

(iii) subtract any charges which are part of the finance charge but which will be paid by the consumer before or at the time of the consummation of the transaction, or have been withheld from the proceeds of the credit.

(B) In conjunction with the disclosure of the amount financed, a creditor shall provide a statement of the consumer's right to obtain, upon a written request, a written itemization of the amount financed. The statement shall include spaces for a "yes" and "no" indication to be initialed by the consumer to indicate whether the consumer wants a written itemization of the amount financed. Upon receiving an affirmative indication, the creditor shall provide, at the time other disclosures are required to be furnished, a written itemization of the amount financed. For the purposes of this subparagraph, "itemization of the amount financed" means a disclosure of the following items, to the extent applicable:

(i) the amount that is or will be paid directly to the consumer;

(ii) the amount that is or will be credited to the consumer's account to discharge obligations owed to the creditor;

(iii) each amount that is or will be paid to third persons by the creditor on the consumer's behalf, together with an identification of or reference to the third person; and

(iv) the total amount of any charges described in the preceding subparagraph (A)(iii).

(3) The "finance charge", not itemized, using that term.

(4) The finance charge expressed as a "annual percentage rate", using that term. This shall not be required if the amount financed does not exceed $75 and the finance charge does not exceed $5, or if the amount financed exceeds $75 and the finance charge does not exceed $7.50.

(5) The sum of the amount financed and the finance charge, which shall be termed the "total of payments".

(6) The number, amount, and due dates or period of payments scheduled to repay the total of payments.

(7) In a sale of property or services in which the seller is the creditor required to disclose pursuant to section 121(b), the "total sale price," using that term, which shall be the total of the cash price of the property or services, additional charges, and the finance charge.

(8) Descriptive explanations of the terms "amount financed", "finance charge", "annual percentage rate", "total of payments", and "total sale price" as specified by the Board. The descriptive explanation of "total sale price" shall include reference to the amount of the downpayment.

(9) Where the credit is secured, a statement that a security interest has been taken in (A) the property which is purchased

as part of the credit transaction, or (B) property not purchased as part of the credit transaction identified by item or type.

(10) Any dollar charge or percentage amount which may be imposed by a creditor solely on account of a late payment, other than a deferral or extension charge.

(11) A statement indicating whether or not the consumer is entitled to a rebate of any finance charge upon refinancing or prepayment in full pursuant to acceleration or otherwise, if the obligation involves a precomputed finance charge. A statement indicating whether or not a penalty will be imposed in those same circumstances if the obligation involves a finance charge computed from time to time by application of a rate to the unpaid principal balance.

(12) A statement that the consumer should refer to the appropriate contract document for any information such document provides about nonpayment, default, the right to accelerate the maturity of the debt, and prepayment rebates and penalties.

(13) In any residential mortgage transaction, a statement indicating whether a subsequent purchaser or assignee of the consumer may assume the debt obligation on its original terms and conditions.

(b)(1) Except as otherwise provided in this chapter, the disclosures required under subsection (a) shall be made before the credit is extended. Except for the disclosures required by subsection (a)(1) of this section, all disclosures required under subsection (a) and any disclosure provided for in subsection (b), (c), or (d) of section 106 shall be conspicuously segregated from all other terms, data, or information provided in connection with a transaction, including any computations or itemization.

(2) In the case of a residential mortgage transaction, as defined in section 103(w), which is also subject to the Real Estate Settlement Procedures Act, good faith estimates of the disclosures required under subsection (a) shall be made in accordance with regulations of the Board under section 121(c) before the credit is extended, or shall be delivered or placed in the mail not later than three business days after the creditor receives the consumer's written application, whichever is earlier. If the disclosure statement furnished within three days of the written application contains an annual percentage rate which is subsequently rendered inaccurate within the meaning of section 107(c), the creditor shall furnish another statement at the time of settlement or consummation.

(c)(1) If a credit receives a purchase order by mail or telephone without personal solicitation, and the cash price and the total sale price and the terms of financing, including the annual percentage rate, are set forth in the creditor's catalog or other printed material distributed to the public, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

(2) If a creditor receives a request for a loan by mail or telephone without personal solicitation and the terms of financing, including the annual percentage rate for representative amounts of credit, are set forth in the creditor's printed material distributed to the public, or in the contract of loan or other printed material deliv-

ered to the obligor, then the disclosures required under subsection (a) may be made at any time not later than the date the first payment is due.

(d) If a consumer credit sale is one of a series of consumer credit sales transactions made pursuant to an agreement providing for the addition of the deferred payment price of that sale to an existing outstanding balance, and the person to whom the credit is extended has approved in writing both the annual percentage rate or rates and the method of computing the finance charge or charges, and the creditor retains no security interest in any property as to which he has received payments aggregating the amount of the sales price including any finance charges attributable thereto, then the disclosure required under subsection (a) for the particular sale may be made at any time not later than the date the first payment for that sale is due. For the purposes of this subsection, in the case of items purchased on different dates, the first purchased shall be deemed first paid for, and in the case of items purchased on the same date, the lowest priced shall be deemed first paid for. (15 U.S.C. 1638)

§ 129. [Repealed. (15 U.S.C. 1639)]

§ 130. Civil liability

(a) Except as otherwise provided in this section, any creditor who fails to comply with any requirement imposed under this chapter, including any requirement under section 125, or chapter 4 or 5 of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of the failure;

(2)(A)(i) in the case of an individual action twice the amount of any finance charge in connection with the transaction, or (ii) in the case of an individual action relating to a consumer lease under chapter 5 of this title, 25 per centum of the total amount of monthly payments under the lease, except that the liability under this subparagraph shall not be less than $100 nor greater than $1,000; or

(B) In the case of a class action, such amount as the court may allow, except that as to each member of the class no minimum recovery shall be applicable, and the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same creditor shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the creditor; and

(3) in the case of any successful action to enforce the foregoing liability or in any action in which a person is determined to have a right of rescission under section 125, the costs of the action, together with a reasonable attorney's fee as determined by the court.

In determining the amount of award in any class action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the

creditor's failure of compliance was intentional. In connection with the disclosures referred to in section 127, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125, section 127(a), or of paragraph (4), (5), (6), (7), (8), (9), or (10) of section 127(b) or for failing to comply with disclosure requirements under State law for any term or item which the Board has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms or items referred to in section 127(a) or any of those paragraphs of section 127(b). In connection with the disclosures referred to in section 128, a creditor shall have a liability determined under paragraph (2) only for failing to comply with the requirements of section 125 or of paragraph (2) (insofar as it requires a disclosure of the "amount financed"), (3), (4), (5), (6), or (9) of section 128(a), or for failing to comply with disclosure requirements under State law for any term which the Board has determined to be substantially the same in meaning under section 111(a)(2) as any of the terms referred to in any of those paragraphs of section 128(a). With respect to any failure to make disclosures required under this chapter or chapter 4 or 5 of this title, liability shall be imposed only upon the creditor required to make disclosure, except as provided in section 131.

(b) A creditor or assignee has no liability under this section or section 108 or section 112 for any failure to comply with any requirement imposed under this chapter or chapter 5, if within sixty days after discovering an error, whether pursuant to a final written examination report or notice issued under section 108(e)(1) or through the creditor's or assignee's own procedures, and prior to the institution of an action under this section or the receipt of written notice of the error from the obligor, the creditor or assignee notifies the person concerned of the error and makes whatever adjustments in the appropriate account are necessary to assure that the person will not be required to pay an amount in excess of the charge actually disclosed, or the dollar equivalent of the annual percentage rate actually disclosed, whichever is lower.

(c) A creditor or assignee may not be held liable in any action brought under this section or section 125 for a violation of this title if the creditor or assignee shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error. Examples of a bona fide error include, but are not limited to, clerical, calculation, computer malfunction and programing, and printing errors, except that an error of legal judgment with respect to a person's obligations under this title is not a bona fide error.

(d) When there are multiple obligors in a consumer credit transaction or consumer lease, there shall be no more than one recovery of damages under subsection (a)(2) for a violation of this title.

(e) Any action under this section may be brought in any United States district court, or in any other court of competent juridisdiction, within one year from the date of the occurrence of the violation. This subsection does not bar a person from asserting a violation of this title in an action to collect the debt which was brought more than one year from the date of the occurrence of the violation

as a matter of defense by recoupment or set-off in such action, except as otherwise provided by State law.

(f) No provision of this section, section 108(b), section 108(c), section 108(e), or section 112 imposing any liability shall apply to any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(g) The multiple failure to disclose to any person any information required under this chapter or chapter 4 or 5 of this title to be disclosed in connection with a single account under an open end consumer credit plan, other single consumer credit sale, consumer loan, consumer lease, or other extension of consumer credit, shall entitle the person to a single recovery under this section but continued failure to disclose after a recovery has been granted shall give rise to rights to additional recoveries. This subsecton does not bar any remedy permitted by section 125.

(h) A person may not take any action to offset any amount for which a creditor or asignee is potentially liable to such person under subsection (a)(2) against any amount owed by such person, unless the amount of the creditor's or assignee's liability under this title has been determined by judgment of a court of competent jurisdiction in an action of which such person was a party. This subsection does not bar a consumer then in default on the obligation from asserting a violation of this title as an original action, or as a defense or counterclaim to an action to collect amounts owed by the consumer brought by a person liable under this title. (15 U.S.C. 1640)

§ 131. Liability of assignees

(a) Except as otherwise specifically provided in this title, any civil action for a violation of this title or proceeding under section 108 which may be brought against a creditor may be maintained against any assignee of such creditor only if the violation for which such action or proceeding is brought is apparent on the face of the disclosure statement, except where the assignment was involuntary. For the purpose of this section, a violation apparent on the face of the disclosure statement includes, but is not limited to (1) a disclosure which can be determined to be incomplete or inaccurate from the face of the disclosure statement or other documents assigned, or (2) a disclosure which does not use the terms required to be used by this title.

(b) Except as provided in section 125(c), in any action or proceeding by or against any subsequent assignee of the original creditor without knowledge to the contrary by the assignee when he acquires the obligation, written acknowledgement of receipt by a person to whom a statement is required to be given pursuant to this title shall be conclusive proof of the delivery thereof and, except as provided in subsection (a), of compliance with this chap-

ter. This section does not affect the rights of the obligor in any action against the original creditor.

(c) Any consumer who has the right to rescind a transaction under section 125 may rescind the transaction as against any assignee of the obligation. (15 U.S.C. 1641)

§ 132. Issuance of credit cards

No credit card shall be issued except in response to a request or application therefor. This prohibition does not apply to the issuance of a credit card in renewal of, or in substitution for, an accepted credit card. (15 U.S.C. 1642)

§ 133. Liability of holder of credit card

(a)(1) A cardholder shall be liable for the unauthorized use of a credit card only if—

(A) the card is an accepted credit card;

(B) the liability is not in excess of $50;

(C) the card issuer give adequate notice to the cardholder of the potential liability;

(D) the card issuer has provided the cardholder with a description of a means by which the card issuer may be notified of loss or theft of the card, which description may be provided on the face or reverse side of the statement required by section 127(b) or on a separate notice accompanying such statement;

(E) the unauthorized use occurs before the card issuer has been notified that an unauthorized use of the credit card has occurred or may occur as the result of loss, theft, or otherwise; and

(F) the card issuer has provided a method whereby the user of such card can be identified as the person authorized to use it.

(2) For purposes of this section, a card issuer has been notified when such steps as may be reasonably required in the ordinary course of business to provide the card issuer with the pertinent information have been taken, whether or not any particular officer, employee, or agent of the card issuer does in fact receive such information.

(b) In any action by a card issuer to enforce liability for the use of a credit card, the burden of proof is upon the card issuer to show that the use was authorized or, if the use was unauthorized, then the burden of proof is upon the card issuer to show that the conditions of liability for the unauthorized use of a credit card, as set forth in subsection (a), have been met.

(c) Nothing in this section imposes liability upon a cardholder for the unauthorized use of a credit card in excess of his liability for such use under other applicable law or under any agreement with the card issuer.

(d) Except as provided in this section, a cardholder incurs no liability from the unauthorized use of a credit card. (15 U.S.C. 1643)

§ 134. Fraudulent use of credit card

(a) Whoever knowingly in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently ob-

tained credit card to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(b) Whoever, with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(c) Whoever, with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(d) Whoever knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (1) within any one-year period has a value aggregating $1,000 or more, (2) has moved in or is part of, or which constitutes interstate or foreign commerce, and (3) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card; or

(e) Whoever knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (1) within any one-year period have a value aggregating $500 or more, and (2) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit cards; or

(f) Whoever in a transaction affecting interstate or foreign commerce furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained credit card knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both. (15 U.S.C. 1644)

§ 135. Business credit cards

The exemption provided by section 104(1) does not apply to the provisions of sections 132, 133, and 134, except that a card issuer and a business or other organization which provides credit cards issued by the same card issuer to ten or more of its employees may by contract agree as to liability of the business or other organization with respect to unauthorized use of such credit cards without regard to the provisions of section 133, but in no case may such business or other organization or card issuer impose liability upon any employee with respect to unauthorized use of such a credit card except in accordance with and subject to the limitations of section 133. (15 U.S.C. 1645)

§ 136. Dissemination of annual percentage rates

(a) The Board shall collect, publish, and disseminate to the public, on a demonstration basis in a number of standard metropolitan statistical areas to be determined by the Board, the annual

percentage rates charged for representative types of nonsale credit by creditors in such areas. For the purpose of this section, the Board is authorized to require creditors in such areas to furnish information necessary for the Board to collect, publish, and disseminate such information.

(b) The Board is authorized to enter into contracts or other arrangements with appropriate persons, organizations, or State agencies to carry out its functions under subsection (a) and to furnish financial assistance in support thereof.

CHAPTER 3—CREDIT ADVERTISING

Sec.
141. Catalogs and multiple-page advertisements.
142. Advertising of downpayments and installments.
143. Advertising of open end credit plans.
144. Advertising of credit other than open end plans.
145. Nonliability of media.
146. Use of annual percentage rate in oral disclosures.

§ 141. Catalogs and multiple-page advertisements

For the purposes of this chapter, a catalog or other multiple-page advertisement shall be considered a single advertisement if it clearly and conspicuously displays a credit terms table on which the information required to be stated under this chapter is clearly set forth. (15 U.S.C. 1661)

§ 142. Advertising of downpayments and installments

No advertisement to aid, promote, or assist directly or indirectly any extension of consumer credit may state

(1) that a specific periodic consumer credit amount or installment amount can be arranged, unless the creditor usually and customarily arranges credit payments or installments for that period and in that amount.

(2) that a specified downpayment is required in connection with any extension of consumer credit, unless the creditor usually and customarily arranges downpayments in that amount. (15 U.S.C. 1662)

§ 143. Advertising of open end credit plans

No advertisement to aid, promote, or assist directly or indirectly the extension of consumer credit under an open end credit plan may set forth any of the specific terms of that plan unless it also clearly and conspicuouly sets forth all of the following items:

(1) Any minimum or fixed amount which could be imposed.

(2) In any case in which periodic rates may be used to compute the finance charge, the periodic rates expressed as annual percentage rates.

(3) Any other term that the Board may by regulation require to be disclosed. (15 U.S.C. 1663)

§ 144. Advertising of credit other than open end plans

(a) Except as provided in subsection (b), this section applies to any advertisement to aid, promote, or assist directly or indirectly

any consumer credit sale, loan, or other extension of credit subject to the provisions of this title, other than an open end credit plan.

(b) The provisions of this section do not apply to advertisements of residential real estate except to the extent that the Board may by regulation require.

(c) If any advertisement to which this section applies states the rate of a finance charge, the advertisement shall state the rate of that charge expressed as an annual percentage rate.

Until April 1, 1982, subsection (d) will read as follows:

(d) If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The cash price or the amount of the loan as applicable.

(2) The downpayment, if any.

(3) The number, amount, and due dates or period of payments scheduled to repay the indebtedness if the credit is extended.

(4) The rate of the finance charge expressed as an annual percentage rate.

Effective April 1, 1982, subsection (d) will read as follows:

(d) If any advertisement to which this section applies states the amount of the downpayment, if any, the amount of any installment payment, the dollar amount of any finance charge, or the number of installments or the period of repayment, then the advertisement shall state all of the following items:

(1) The downpayment, if any.

(2) The terms of repayment.

(3) The rate of the finance charge expressed as an annual percentage rate. (15 U.S.C. 1664)

§ 145. Nonliability of media

There is no liability under this chapter on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated. (15 U.S.C. 1665)

§ 146. Use of annual percentage rate in oral disclosures

In responding orally to any inquiry about the cost of credit, a creditor, regardless of the method used to compute finance charges, shall state rates only in terms of the annual percentage rate, except that in the case of an open end credit plan, the periodic rate also may be stated and, in the case of an other than open end credit plan where a major component of the finance charge consists of interest computed at a simple annual rate, the simple annual rate also may be stated. The Board may, by regulation, modify the requirements of this section or provide an exception from this section for a transaction or class of transactions for which the creditor cannot determine in advance the applicable annual percentage rate.

CHAPTER 4—CREDIT BILLING

Sec.
161. Correction of billing errors.

162. Regulation of credit reports.
163. Length of billing period.
164. Prompt crediting of payments.
165. Treatment of credit balances.
166. Prompt notification of returns.
167. Use of cash discounts.
168. Prohibition of tie-in services.
169. Prohibition of offsets.
170. Rights of credit card customers.
171. Relation to State laws.

§ 161. Correction of billing errors

(a) If a creditor, within sixty days after having transmitted to an obligor a statement of the obligor's account in connection with an extension of consumer credit, receives at the address disclosed under section 127(b)(10) a written notice (other than notice on a payment stub or other payment medium supplied by the creditor if the creditor so stipulates with the disclosure required under section 127(a)(7)) from the obligor in which the obligor—

(1) sets forth or otherwise enables the creditor to identify the name and account number (if any) of the obligor,

(2) indicates the obligor's belief that the statement contains a billing error and the amount of such billing error, and

(3) sets forth the reasons for the obligor's belief (to the extent applicable) that the statement contains a billing error,

the creditor shall, unless the obligor has, after giving such written notice and before the expiration of the time limits herein specified, agreed that the statement was correct—

(A) not later than thirty days after the receipt of the notice, send a written acknowledgement thereof to the obligor, unless the action required in subparagraph (B) is taken within such thirty-day period, and

(B) not later than two complete billing cycles of the creditor (in no event later than ninety days) after the receipt of the notice and prior to taking any action to collect the amount, or any part thereof, indicated by the obligor under paragraph (2) either—

(i) make appropriate corrections in the account of the obligor, including the crediting of any finance charges on amounts erroneously billed, and transmit to the obligor a notification of such corrections and the creditor's explanation of any change in the amount indicated by the obligor under paragraph (2) and, if any such change is made and the obligor so requests, copies of documentary evidence of the obligor's indebtedness; or

(ii) send a written explanation or clarification to the obligor, after having conducted an investigation, setting forth to the extent applicable the reasons why the creditor believes the account of the obligor was correctly shown in the statement and, upon request of the obligor, provide copies of documentary evidence of the obligor's indebtedness. In the case of a billing error where the obligor alleges that the creditor's billing statement reflects goods not delivered to the obligor or his designee in accordance with the agreement made at the time of the transaction, a creditor may not construe such amount to be correctly

shown unless he determines that such goods were actually delivered, mailed, or otherwise sent to the obligor and provides the obligor with a statement of such determination.

After complying with the provisions of this subsection with respect to an alleged billing error, a creditor has no further responsibility under this section if the obligor continues to make substantially the same allegation with respect to such error.

(b) For the purpose of this section, a "billing error" consists of any of the following:

(1) A reflection on a statement of an extension of credit which was not made to the obligor or, if made, was not in the amount reflected on such statement.

(2) A reflection on a statement of an extension of credit for which the obligor requests additional clarification including documentary evidence thereof.

(3) A reflection on a statement of goods or services not accepted by the obligor or his designee or not delivered to the obligor or his designee in accordance with the agreement made at the time of a transaction.

(4) The creditor's failure to reflect properly on a statement a payment made by the obligor or a credit issued to the obligor.

(5) A computation error or similar error of an accounting nature of the creditor on a statement.

(6) Failure to transmit the statement required under section 127(b) of this Act to the last address of the obligor which has been disclosed to the creditor, unless that address was furnished less than twenty days before the end of the billing cycle for which the statement is required.

(7) Any other error described in regulations of the Board.

(c) For the purposes of this section, "action to collect the amount, or any part thereof, indicated by an obligor under paragraph (2)" does not include the sending of statements of account, which may include finance charges on amounts in dispute, to the obligor following written notice from the obligor as specified under subsection (a), if—

(1) the obligor's account is not restricted or closed because of the failure of the obligor to pay the amount indicated under paragraph (2) of subsection (a), and

(2) the creditor indicates the payment of such amount is not required pending the creditor's compliance with this section.

Nothing in this section shall be construed to prohibit any action by a creditor to collect any amount which has not been indicated by the obligor to contain a billing error.

(d) Pursuant to regulations of the Board, a creditor operating an open end consumer credit plan may not, prior to the sending of the written explanation or clarification required under paragraph (B)(ii), restrict or close an account with respect to which the obligor has indicated pursuant to subsection (a) that he believes such account to contain a billing error solely because of the obligor's failure to pay the amount indicated to be in error. Nothing in this subsection shall be deemed to prohibit a creditor from applying against the credit limit on the obligor's account the amount indicated to be in error.

(e) Any creditor who fails to comply with the requirements of this section or section 162 forfeits any right to collect from the obligor the amount indicated by the obligor under paragraph (2) of subsection (a) of this section, and any finance charges thereon, except that the amount required to be forfeited under this subsection may not exceed $50. (15 U.S.C. 1666)

§ 162. Regulation of credit reports

(a) After receiving a notice from an obligor as provided in section 161(a), a creditor or his agent may not directly or indirectly threaten to report to any person adversely on the obligor's credit rating or credit standing because of the obligor's failure to pay the amount indicated by the obligor under section 161(a)(2), and such amount may not be reported as delinquent to any third party until the creditor has met the requirements of section 161 and has allowed the obligor the same number of days (not less than ten) thereafter to make payment as is provided under the credit agreement with the obligor for the payment of undisputed amounts.

(b) If a creditor receives a further written notice from an obligor that an amount is still in dispute within the time allowed for payment under subsection (a) of this section, a creditor may not report to any third party that the amount of the obligor is delinquent because the obligor has failed to pay an amount which he has indicated under section 161(a)(2), unless the creditor also reports that the amount is in dispute and, at the same time, notifies the obligor of the name and address of each party to whom the creditor is reporting information concerning the delinquency.

(c) A creditor shall report any subsequent resolution of any delinquencies reported pursuant to subsection (b) to the parties to whom such delinquencies were initially reported. (15 U.S.C. 1666a)

§ 163. Length of billing period

(a) If an open end consumer credit plan provides a time period within which an obligor may repay any portion of the credit extended without incurring an additional finance charge, such additional finance charge may not be imposed with respect to such portion of the credit extended for the billing cycle of which such period is a part unless a statement which includes the amount upon which the finance charge for that period is based was mailed at least fourteen days prior to the date specified in the statement by which payment must be made in order to avoid imposition of that finance charge.

(b) Subsection (a) does not apply in any case where a creditor has been prevented, delayed, or hindered in making timely mailing or delivery of such periodic statement within the time period specified in such subsection because of an act of God, war, natural disaster, strike, or other excusable or justifiable cause, as determined under regulations of the Board. (15 U.S.C. 1666b)

§ 164. Prompt crediting of payments

Payments received from an obligor under an open end consumer credit plan by the creditor shall be posted promptly to the obligor's account as specified in regulations of the Board. Such regulations shall prevent a finance charge from being imposed on any obligor

if the creditor has received the obligor's payment in readily identifiable form in the amount, manner, location, and time indicated by the creditor to avoid the imposition thereof. (15 U.S.C. 1666c).

§ 165. Treatment of credit balances

Whenever a credit balance in excess of $1 is created in connection with a consumer credit transaction through (1) transmittal of funds to a creditor in excess of the total balance due on an account, (2) rebates of unearned finance charges or insurance premiums, or (3) amounts otherwise owed to or held for the benefit of an obligor, the creditor shall—

(A) credit the amount of the credit balance to the consumer's account;

(B) refund any part of the amount of the remaining credit balance, upon request of the consumer; and

(C) make a good faith effort to refund to the consumer by cash, check, or money order any part of the amount of the credit balance remaining in the account for more than six months, except that no further action is required in any case in which the consumer's current location is not known by the creditor and cannot be traced through the consumer's last known address or telephone number. (15 U.S.C. 1666d)

§ 166. Prompt notification of returns

With respect to any sales transaction where a credit card has been used to obtain credit, where the seller is a person other than the card issuer, and where the seller accepts or allows a return of the goods or forgiveness of a debit for services which were the subject of such sale, the seller shall promptly transmit to the credit card issuer, a credit statement with respect thereto and the credit card issuer shall credit the account of the obligor for the amount of the transaction. (15 U.S.C. 1666e)

§ 167. Use of cash discounts

(a)(1) With respect to a credit card which may be used for extensions of credit in sales transaction in which the seller is a person other than the card issuer, the card issuer may not, by contract or otherwise, prohibit any such seller from offering a discount to a cardholder to induce the cardholder to pay by cash, check, or similar means rather than use a credit card.

(2) No seller in any sales transaction may impose a surcharge on a cardholder who elects to use a credit card in lieu of payment by cash, check, or similar means.

(b) With respect to any sales transaction, any discount not in excess of 5 per centum offered by the seller for the purpose of inducing payment by cash, check, or other means not involving the use of a credit card shall not constitute a finance charge as determined under section 106, if such discount is offered to all prospective buyers and its availability is disclosed to all prospective buyers clearly and conspicuously in accordance with regulations of the Board. (15 U.S.C. 1666f)

§ 168. Prohibition of tie-in services

Notwithstanding any agreement to the contrary, a card issuer may not require a seller, as a condition to participating in a credit card plan, to open an account with or procure any other service from the card issuer or its subsidiary or agent. (15 U.S.C. 1666g)

§ 169. Prohibition of offsets

(a) A card issuer may not take any action to offset a cardholder's indebtedness arising in connection with a consumer credit transaction under the relevant credit card plan against funds of the cardholder held on deposit with the card issuer unless—

(1) such action was previously authorized in writing by the cardholder in accordance with a credit plan whereby the cardholder agrees periodically to pay debts incurred in his open end credit account by permitting the card issuer periodically to deduct all or a portion of such debt from the cardholder's deposit account, and

(2) such action with respect to any outstanding disputed amount not be taken by the card issuer upon request of the cardholder.

In the case of any credit card account in existence on the effective date of this section, the previous written authorization referred to in clause (1) shall not be required until the date (after such effective date) when such account is renewed, but in no case later than one year after such effective date. Such written authorization shall be deemed to exist if the card issuer has previously notified the cardholder that the use of his credit card account will subject any funds which the card issuer holds in deposit accounts of such cardholder to offset against any amounts due and payable on his credit card account which have not been paid in accordance with the terms of the agreement between the card issuer and the cardholder.

(b) This section does not alter or affect the right under State law of a card issuer to attach or otherwise levy upon funds of a cardholder held on deposit with the card issuer if that remedy is constitutionally available to creditors generally. (15 U.S.C. 1666h)

§ 170. Rights of credit card customers

(a) Subject to the limitation contained in subsection (b), a card issuer who has issued a credit card to a cardholder pursuant to an open end consumer credit plan shall be subject to all claims (other than tort claims) and defenses arising out of any transaction in which the credit card is used as a method of payment or extension of credit if (1) the obligor has made a good faith attempt to obtain satisfactory resolution of a disagreement or problem relative to the transaction from the person honoring the credit card; (2) the amount of the initial transaction exceeds $50; and (3) the place where the initial transaction occurred was in the same State as the mailing address previously provided by the cardholder or was within 100 miles from such address, except that the limitations set forth in clauses (2) and (3) with respect to an obligor's right to assert claims and defenses against a card issuer shall not be applicable to any transaction in which the person honoring the credit

card (A) is the same person as the card issuer, (B) is controlled by the card issuer, (C) is under direct or indirect common control with the card issuer, (D) is a franchised dealer in the card issuer's products or services, or (E) has obtained the order for such transaction through a mail solicitation made by or participated in by the card issuer in which the cardholder is solicited to enter into such transaction by using the credit card issued by the card issuer.

(b) The amount of claims or defenses asserted by the cardholder may not exceed the amount of credit outstanding with respect to such transaction at the time the cardholder first notifies the card issuer or the person honoring the credit card of such claim or defense. For the purpose of determining the amount of credit outstanding in the preceding sentence, payments and credits to the cardholder's account are deemed to have been applied, in the order indicated, to the payment of: (1) late charges in the order of their entry to the account; (2) finance charges in order of their entry to the account; and (3) debits to the account other than those set forth above, in the order in which each debit entry to the account was made. (15 U.S.C. 1666i)

§ 171. Relation to State laws

(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to credit billing practices, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection to the consumer.

(b) The Board shall by regulation exempt from the requirements of this chapter any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection to the consumer, and that there is adequate provision for enforcement.

(c) Notwithstanding any other provisions of this title, any discount offered under section 167(b) of this title shall not be considered a finance charge or other charge for credit under the usury laws of any State or under the laws of any State relating to disclosure of information in connection with credit transactions, or relating to the types, amounts or rates of charges, or to any element or elements of charges permissible under such laws in connection with the extension or use of credit. (15 U.S.C. 1666j)

CHAPTER 5—CONSUMER LEASES

Sec.
181. Definitions.
182. Consumer lease disclosures.
183. Lessee's liability on expiration or termination of lease.
184. Consumer lease advertising.
185. Civil liability.
186. Relation to State laws.

§ 181. Definitions

For purposes of this chapter—

(1) The term "consumer lease" means a contract in the form of a lease or bailment for the use of personal property by a natural person for a period of time exceeding four months, and for a total contractual obligation not exceeding $25,000, primarily for personal, family, or household purposes, whether or not the lessee has the option to purchase or otherwise become the owner of the property at the expiration of the lease, except that such term shall not include any credit sale as defined in section 103(g). Such term does not include a lease for agricultural, business, or commerical purposes, or to a government or governmental agency or instrumentality, or to an organization.

(2) The term "lessee" means a natural person who leases or is offered a consumer lease.

(3) The term "lessor" means a person who is regularly engaged in leasing, offering to lease, or arranging to lease under a consumer lease.

(4) The term "personal property" means any property which is not real property under the laws of the State where situated at the time offered or otherwise made available for lease.

(5) The terms "security" and "security interest" mean any interest in property which secures payment or performance of an obligation. (15 U.S.C. 1667)

§ 182. Consumer lease disclosures

Each lessor shall give a lessee prior to the consummation of the lease a dated written statement on which the lessor and lessee are identified setting out accurately and in a clear and conspicuous manner the following information with respect to that lease, as applicable:

(1) A brief description or identification of the leased property;

(2) The amount of any payment by the lessee required at the inception of the lease;

(3) The amount paid or payable by the lessee for official fees, registration, certificate of title, or license fees or taxes;

(4) The amount of other charges payable by the lessee not included in the periodic payments, a description of the charges and that the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability;

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time;

(6) A statement identifying all express warranties and guarantees made by the manufacturer or lessor with respect to the leased property, and identifying the party responsible for maintaining or servicing the leased property together with a description of the responsibility;

(7) A brief description of insurance provided or paid for by the lessor or required of the lessee, including the types and amounts of the coverages and costs;

(8) A description of any security interest held or to be retained by the lessor in connection with the lease and a clear identification of the property to which the security interest relates;

(9) The number, amount, and due dates or periods of payments under the lease and the total amount of such periodic payments;

(10) Where the lease provides that the lessee shall be liable for the anticipated fair market value of the property on expiration of the lease, the fair market value of the property at the inception of the lease, the aggregate cost of the lease on expiration, and the differential between them; and

(11) A statement of the conditions under which the lessee or lessor may terminate the lease prior to the end of the term and the amount or method of determining any penalty or other charge for delinquency, default, late payments, or early termination.

The disclosures required under this section may be made in the lease contract to be signed by the lessee. The Board may provide by regulation that any portion of the information required to be disclosed under this section may be given in the form of estimates where the lessor is not in a position to know exact information. (15 U.S.C. 1667a)

§ 183. Lessee's liability on expiration or termination of lease

(a) Where the lessee's liability on expiration of a consumer lease is based on the estimated residual value of the property such estimated residual value shall be a reasonable approximation of the anticipated actual fair market value of the property on lease expiration. There shall be a rebuttable presumption that the estimated residual value is unreasonable to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease. In addition, where the lessee has such liability on expiration of a consumer lease there shall be a rebuttable presumption that the lessor's estimated residual value is not in good faith to the extent that the estimated residual value exceeds the actual residual value by more than three times the average payment allocable to a monthly period under the lease and such lessor shall not collect from the lessee the amount of such excess liability on expiration of a consumer lease unless the lessor brings a successful action with respect to such excess liability. In all actions, the lessor shall pay the lessee's reasonable attorney's fees. The presumptions stated in this section shall not apply to the extent the excess of estimated over actual residual value is due to physical damage to the property beyond reasonable wear and use, or to excessive use, and the lease may set standards for such wear and use if such standards are not unreasonable. Nothing in this subsection shall preclude the right of a willing lessee to make any mutually agreeable final adjustment with respect to such excess residual liability, provided such an agreement is reached after termination of the lease.

(b) Penalties or other charges for delinquency, default, or early termination may be specified in the lease but only at an amount which is reasonable in the light of the anticipated or actual harm caused by the delinquency, default, or early termination, the difficulties of proof of loss, and the inconvenience or nonfeasibility of otherwise obtaining an adequate remedy.

(c) If a lease has a residual value provision at the termination of the lease, the lessee may obtain at his expense, a professional appraisal of the leased property by an independent third party agreed to by both parties. Such appraisal shall be final and binding on the parties. (15 U.S.C. 1667b)

§ 184. Consumer lease advertising

(a) No advertisement to aid, promote, or assist directly or indirectly any consumer lease shall state the amount of any payment, the number of required payments, or that any or no downpayment or other payment is required at inception of the lease unless the advertisement also states clearly and conspicuously and in accordance with regulations issued by the Board each of the following items of information which is applicable:

(1) That the transaction advertised is a lease.

(2) The amount of any payment required at the inception of the lease or that no such payment is required if that is the case.

(3) The number, amounts, due dates or periods of scheduled payments, and the total of payments under the lease.

(4) That the lessee shall be liable for the differential, if any, between the anticipated fair market value of the leased property and its appraised actual value at the termination of the lease, if the lessee has such liability.

(5) A statement of the amount or method of determining the amount of any liabilities the lease imposes upon the lessee at the end of the term and whether or not the lessee has the option to purchase the leased property and at what price and time.

(b) There is no liability under this section on the part of any owner or personnel, as such, of any medium in which an advertisement appears or through which it is disseminated. (15 U.S.C. 1667c)

§ 185. Civil liability

(a) Any lessor who fails to comply with any requirement imposed under section 182 or 183 of this chapter with respect to any person is liable to such person as provided in section 130.

(b) Any lessor who fails to comply with any requirement imposed under section 184 of this chapter with respect to any person who suffers actual damage from the violation is liable to such person as provided in section 130. For the purposes of this section, the term "creditor" as used in sections 130 and 131 shall include a lessor as defined in this chapter.

(c) Notwithstanding section 130(e), any action under this section may be brought in any United States district court or in any other court of competent jurisdiction. Such actions alleging a failure to disclose or otherwise comply with the requirements of this chapter

shall be brought within one year of the termination of the lease agreement. (15 U.S.C. 1667d)

§ 186. Relation to State laws

(a) This chapter does not annul, alter, or affect, or exempt any person subject to the provisions of this chapter from complying with, the laws of any State with respect to consumer leases, except to the extent that those laws are inconsistent with any provision of this chapter, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this chapter if the Board determines that such law gives greater protection and benefit to the consumer.

(b) The Board shall by regulation exempt from the requirements of this chapter any class of lease transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this chapter or that such law gives greater protection and benefit to the consumer, and that there is adequate provision for enforcement. (15 U.S.C. 1667e)

TITLE II—EXTORTIONATE CREDIT TRANSACTIONS

[See 82 Stat. 159, 82 Stat. 162, and Chapter 42 of title 18, United States Code.]

TITLE III—RESTRICTION ON GARNISHMENT

Sec.
301. Findings and purpose.
302. Definitions.
303. Restriction on garnishment.
304. Restriction on discharge from employment by reason of garnishment.
305. Exemption for State-regulated garnishments.
306. Enforcement by Secretary of Labor.
307. Effect on State laws.

§ 301. Findings and purpose

(a) The Congress finds:

(1) The unrestricted garnishment of compensation due for personal services encourages the making of predatory extensions of credit. Such extensions of credit divert money into excessive credit payments and thereby hinder the production and flow of goods in interstate commerce.

(2) The application of garnishment as a creditors' remedy frequently results in loss of employment by the debtor, and the resulting disruption of employment, production, and consumption constitutes a substantial burden on interstate commerce.

(3) The great disparities among the laws of the several States relating to garnishment have, in effect, destroyed the uniformity of the bankruptcy laws and frustrated the purposes thereof in many areas of the country.

(b) On the basis of the findings stated in subsection (a) of this section, the Congress determines that the provisions of this title are necessary and proper for the purpose of carrying into execution the

powers of the Congress to regulate commerce and to establish uniform bankruptcy laws. (15 U.S.C. 1671)

§ 302. Definitions

For the purposes of this title:

(a) The term "earnings" means compensation paid or payable for personal services, whether denominated as wages, salary, commission, bonus, or otherwise, and includes periodic payments pursuant to a pension or retirement program.

(b) The term "disposable earnings" means that part of the earnings of any individual remaining after the deduction from those earnings of any amounts required by law to be withheld.

(c) The term "garnishment" means any legal or equitable procedure through which the earnings of any individual are required to be withheld for payment of any debt. (15 U.S.C. 1672)

§ 303. Restriction on garnishment

(a) Except as provided in subsection (b) and in section 305, the maximum part of the aggregate disposable earnings of an individual for any workweek which is subjected to garnishment may not exceed [1]

(1) 25 per centum of his disposable earnings for that week, or

(2) the amount by which his disposable earnings for that week exceed thirty times the Federal minimum hourly wage prescribed by section 6(a)(1) of the Fair Labor Standards Act of 1938 in effect at the time the earnings are payable,

whichever is less. In the case of earnings for any pay period other than a week, the Secretary of Labor shall by regulation prescribe a multiple of the Federal minimum hourly wage equivalent in effect to that set forth in paragraph (2).

(b)(1) The restrictions of subsection (a) do not apply in the case of—

(A) any order for the support of any person issued by a court of competent jurisdiction or in accordance with an administrative procedure, which is established by State law, which affords substantial due process, and which is subject to judicial review.

(B) any order of any court of bankruptcy under chapter XIII of the Bankruptcy Act.

(C) any debt due for any State or Federal tax.

(2) The maximum part of the aggregate disposable earnings of an individual for any workweek which is subject to garnishment to enforce any order for the support of any person shall not exceed—

(A) where such individual is supporting his spouse or dependent child (other than a spouse or child with respect to whose support such order is used), 50 per centum of such individual's disposable earnings for that week; and

(B) where such individual is not supporting such a spouse or dependent child described in clause (A), 60 per centum of such individual's disposable earnings for that week;

except that, with respect to the disposable earnings of any individual for any workweek, the 50 per centum specified in clause (A) shall be deemed to be 55 per centum and the 60 per centum speci-

[1] So in original. Probably should be "exceed—".

fied in clause (B) shall be deemed to be 65 per centum, if and to the extent that such earnings are subject to garnishment to enforce a support order with respect to a period which is prior to the twelve-week period which ends with the beginning of such workweek.

(c) No court of the United States or any State, and no State (or officer or agency thereof), may make, execute, or enforce any order or process in violation of this section. (15 U.S.C. 1673)

§ 304. Restriction on discharge from employment by reason of garnishment

(a) No employer may discharge any employee by reason of the fact that his earnings have been subjected to garnishment for any one indebtedness.

(b) Whoever willfully violates subsection (a) of this section shall be fined not more than $1,000, or imprisoned not more than one year, or both. (15 U.S.C. 1674)

§ 305. Exemption for State-regulated garnishments

The Secretary of Labor may by regulation exempt from the provisions of section 303(a) and (b)(2) garnishments issued under the laws of any State if he determines that the laws of that State provide restrictions on garnishment which are substantially similar to those provided in section 303(a) and (b)(2). (15 U.S.C. 1675)

§ 306. Enforcement by Secretary of Labor

The Secretary of Labor, acting through the Wage and Hour Division of the Department of Labor, shall enforce the provisions of this title. (15 U.S.C. 1676)

§ 307. Effect on State laws

This title does not annul, alter, or affect, or exempt any person from complying with, the laws of any State [1]

(1) prohibiting garnishments or providing for more limited garnishments than are allowed under this title, or

(2) prohibiting the discharge of any employee by reason of the fact that his earnings have been subjected to garnishment for more than one indebtedness. (15 U.S.C. 1677)

TITLE IV—NATIONAL COMMISSION ON CONSUMER FINANCE

[The National Commission on Consumer Finance was to submit a final report by December 31, 1972, and was to cease to exist after submission of such report. See 82 Stat. 164.]

TITLE V—GENERAL PROVISIONS

Sec.
501. Severability.
502. Captions and catchlines for reference only.
503. Grammatical usages.
504. Effective dates.

[1] So in original. Probably should be "State—".

§ 501. Severability

If a provision enacted by this Act is held invalid, all valid provisions that are severable from the invalid provision remain in effect. If a provision enacted by this Act is held invalid in one or more of its applications, the provision remains in effect in all valid applications that are severable from the invalid application or applications. (15 U.S.C. 1602 note)

§ 502. Captions and catchlines for reference only

Captions and catchlines are intended solely as aids to convenient reference, and no inference as to the legislative intent with respect to any provision enacted by this Act may be drawn from them. (15 U.S.C. 1602 note)

§ 503. Grammatical usages

In this Act:

(1) The word "may" is used to indicate that an action either is authorized or is permitted.

(2) The word "shall" is used to indicate that an action is both authorized and required.

(3) The phrase "may not" is used to indicate that an action is both unauthorized and forbidden.

(4) Rules of law are stated in the indicative mood. (15 U.S.C. 1602 note)

§ 504. Effective dates

(a) Except as otherwise specified, the provisions of this Act take effect upon enactment.

(b) Chapters 2 and 3 of title I take effect on July 1, 1969.

(c) Title III takes effect on July 1, 1970.

(d) Title VI takes effect upon the expiration of one hundred and eighty days following the date of its enactment. (15 U.S.C. 1602 note)

TITLE VI—CONSUMER CREDIT REPORTING

Sec.

601. Short title.
602. Findings and purpose.
603. Definitions and rules of construction.
604. Permissible purposes of reports.
605. Obsolete information.
606. Disclosure of investigative consumer reports.
607. Compliance procedures.
608. Disclosures to governmental agencies.
609. Disclosure to consumers.
610. Conditions of disclosure to consumers.
611. Procedure in case of disputed accuracy.
612. Charges for certain disclosures.
613. Public record information for employment purposes.
614. Restrictions on investigative consumer reports.
615. Requirements on users of consumer reports.
616. Civil liability for willful noncompliance.
617. Civil liability for negligent noncompliance.
618. Jurisdiction of courts; limitation of actions.
619. Obtaining information under false pretenses.
620. Unauthorized disclosures by officers or employees.
621. Administrative enforcement.
622. Relation to State laws.

§ 601. Short title

This title may be cited as the Fair Credit Reporting Act. (15 U.S.C. 1601 note)

§ 602. Findings and purpose

(a) The Congress makes the following findings:

(1) The banking system is dependent upon fair and accurate credit reporting. Inaccurate credit reports directly impair the efficiency of the banking system, and unfair credit reporting methods undermine the public confidence which is essential to the continued functioning of the banking system.

(2) An elaborate mechanism has been developed for investigating and evaluating the credit worthiness, credit standing, credit capacity, character, and general reputation of consumers.

(3) Consumer reporting agencies have assumed a vital role in assembling and evaluating consumer credit and other information on consumers.

(4) There is a need to insure that consumer reporting agencies exercise their grave responsibilities with fairness, impartiality, and a respect for the consumer's right to privacy.

(b) It is the purpose of this title to require that consumer reporting agencies adopt reasonable procedures for meeting the needs of commerce for consumer credit, personnel, insurance, and other information in a manner which is fair and equitable to the consumer, with regard to the confidentiality, accuracy, relevancy, and proper utilization of such information in accordance with the requirements of this title. (15 U.S.C. 1681)

§ 603. Definitions and rules of construction

(a) Definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "person" means any individual, partnership, corporation, trust, estate, cooperative, association, government or governmental subdivision or agency, or other entity.

(c) The term "consumer" means an individual.

(d) The term "consumer report" means any written, oral, or other communication of any information by a consumer reporting agency bearing on a consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living which is used or expected to be used or collected in whole or in part for the purpose of serving as a factor in establishing the consumer's eligibility for (1) credit or insurance to be used primarily for personal, family, or household purposes, or (2) employment purposes, or (3) other purposes authorized under section 604. The term does not include (A) any report containing information solely as to transactions or experiences between the consumer and the person making the report; (B) any authorization or approval of a specific extension of credit directly or indirectly by the issuer of a credit card or similar device; or (C) any report in which a person who has been requested by a third party to make a specific extension of credit directly or indirectly to a consumer conveys his decision with respect to such request, if the third party advises the consumer of the name and address of the person to whom

the request was made and such person makes the disclosures to the consumer required under section 615.

(e) The term "investigative consumer report" means a consumer report or portion thereof in which information on a consumer's character, general reputation, personal characteristics, or mode of living is obtained through personal interviews with neighbors, friends, or associates of the consumer reported on or with others with whom he is acquainted or who may have knowledge concerning any such items of information. However, such information shall not include specific factual information on a consumer's credit record obtained directly from a creditor of the consumer or from a consumer reporting agency when such information was obtained directly from a creditor of the consumer or from the consumer.

(f) The term "consumer reporting agency" means any person which, for monetary fees, dues, or on a cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling or evaluating consumer credit information or other information on consumers for the purpose of furnishing consumer reports to third parties, and which uses any means or facility of interstate commerce for the purpose of preparing or furnishing consumer reports.

(g) The term "file", when used in connection with information on any consumer, means all of the information on that consumer recorded and retained by a consumer reporting agency regardless of how the information is stored.

(h) The term "employment purposes" when used in connection with a consumer report means a report used for the purpose of evaluating a consumer for employment, promotion, reassignment or retention as an employee.

(i) The term "medical information" means information or records obtained, with the consent of the individual to whom it relates, from licensed physicians or medical practitioners, hospitals, clinics, or other medical or medically related facilities. (15 U.S.C. 1681a)

§ 604. Permissible purposes of reports

A consumer reporting agency may furnish a consumer report under the following circumstances and no other:

(1) In response to the order of a court having jurisdiction to issue such an order.

(2) In accordance with the written instructions of the consumer to whom it relates.

(3) To a person which it has reason to believe—

(A) intends to use the information in connection with a credit transaction involving the consumer on whom the information is to be furnished and involving the extension of credit to, or review or collection of an account of, the consumer; or

(B) intends to use the information for employment purposes; or

(C) intends to use the information in connection with the underwriting of insurance involving the consumer; or

(D) intends to use the information in connection with a determination of the consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by

law to consider an applicant's financial responsibility or status; or

(E) otherwise has a legitimate business need for the information in connection with a business transaction involving the consumer. (15 U.S.C. 1681b)

§ 605. Obsolete information

(a) Except as authorized under subsection (b), no consumer reporting agency may make any consumer report containing any of the following items of information:

(1) Cases under title 11 of the United States Code or under the Bankruptcy Act that, from the date of entry of the order for relief or the date of adjudication, as the case may be, antedate the report by more than 10 years.

(2) Suits and judgments which, from date of entry, antedate the report by more than seven years or until the governing statute of limitations has expired, whichever is the longer period.

(3) Paid tax liens which, from date of payment, antedate the report by more than seven years.

(4) Accounts placed for collection or charged to profit and loss which antedate the report by more than seven years.

(5) Records of arrest, indictment, or conviction of crime which, from date of disposition, release, or parole, antedate the report by more than seven years.

(6) Any other adverse item of information which antedates the report by more than seven years.

(b) The provisions of subsection (a) are not applicable in the case of any consumer credit report to be used in connection with—

(1) a credit transaction involving, or which may reasonably be expected to involve, a principal amount of $50,000 or more;

(2) the underwriting of life insurance involving, or which may reasonably be expected to involve, a face amount of $50,000 or more; or

(3) the employment of any individual at an annual salary which equals, or which may reasonably be expected to equal $20,000, or more. (15 U.S.C. 1681c)

§ 606. Disclosure of investigative consumer reports

(a) A person may not procure or cause to be prepared an investigative consumer report on any consumer unless—

(1) it is clearly and accurately disclosed to the consumer that an investigative consumer report including information as to his character, general reputation, personal characteristics, and mode of living, whichever are applicable, may be made, and such disclosure (A) is made in a writing mailed, or otherwise delivered, to the consumer, not later than three days after the date on which the report was first requested, and (B) includes a statement informing the consumer of his right to request the additional disclosures provided for under subsection (b) of this section; or

(2) the report is to be used for employment purposes for which the consumer has not specifically applied.

(b) Any person who procures or causes to be prepared an investigative consumer report on any consumer shall, upon written re-

quest made by the consumer within a reasonable period of time after the receipt by him of the disclosure required by subsection (a)(1), shall [1] make a complete and accurate disclosure of the nature and scope of the investigation requested. This disclosure shall be made in a writing mailed, or otherwise delivered, to the consumer not later than five days after the date on which the request for such disclosure was received from the consumer or such report was first requested, whichever is the later.

(c) No person may be held liable for any violation of subsection (a) or (b) of this section if he shows by a preponderance of the evidence that at the time of the violation he maintained reasonable procedures to assure compliance with subsection (a) or (b). (15 U.S.C. 1681d)

§ 607. Compliance procedures

(a) Every consumer reporting agency shall maintain reasonable procedures designed to avoid violations of section 605 and to limit the furnishing of consumer reports to the purposes listed under section 604. These procedures shall require that prospective users of the information identify themselves, certify the purposes for which the information is sought, and certify that the information will be used for no other purpose. Every consumer reporting agency shall make a reasonable effort to verify the identity of a new prospective user and the uses certified by such prospective user prior to furnishing such user a consumer report. No consumer reporting agency may furnish a consumer report to any person if it has reasonable grounds for believing that the consumer report will not be used for a purpose listed in section 604.

(b) Whenever a consumer reporting agency prepares a consumer report it shall follow reasonable procedures to assure maximum possible accuracy of the information concerning the individual about whom the report relates. (15 U.S.C. 1681e)

§ 608. Disclosures to governmental agencies

Notwithstanding the provisions of section 604, a consumer reporting agency may furnish identifying information respecting any consumer, limited to his name, address, former addresses, places of employment, or former places of employment, to a governmental agency. (15 U.S.C. 1681f)

§ 609. Disclosures to consumers

(a) Every consumer reporting agency shall, upon request and proper identification of any consumer, clearly and accurately disclose to the consumer:

(1) The nature and substance of all information (except medical information) in its files on the consumer at the time of the request.

(2) The sources of the information; except that the sources of information acquired solely for use in preparing an investigative consumer report and actually used for no other purpose need not be disclosed: *Provided,* That in the event an action is brought under this title, such sources shall be available to the plaintiff under ap-

[1] So in original. The word "shall" probably should be omitted.

propriate discovery procedures in the court in which the action is brought.

(3) The recipients of any consumer report on the consumer which it has furnished—

(A) for employment purposes within the two-year period preceding the request, and

(B) for any other purposes within the six-month period preceding the request.

(b) The requirements of subsection (a) respecting the disclosure of sources of information and the recipients of consumer reports do not apply to information received or consumer reports furnished prior to the effective date of this title except to the extent that the matter involved is contained in the files of the consumer reporting agency on that date. (15 U.S.C. 1681g)

§ 610. Conditions of disclosure to consumers

(a) A consumer reporting agency shall make the disclosures required under section 609 during normal business hours and on reasonable notice.

(b) The disclosures required under section 609 shall be made to the consumer—

(1) in person if he appears in person and furnishes proper identification; or

(2) by telephone if he has made a written request, with proper identification, for telephone disclosure and the toll charge, if any, for the telephone call is prepaid by or charged directly to the consumer.

(c) Any consumer reporting agency shall provide trained personnel to explain to the consumer any information furnished to him pursuant to section 609.

(d) The consumer shall be permitted to be accompanied by one other person of his choosing, who shall furnish reasonable identification. A consumer reporting agency may require the consumer to furnish a written statement granting permission to the consumer reporting agency to discuss the consumer's file in such person's presence.

(e) Except as provided in sections 616 and 617, no consumer may bring any action or proceeding in the nature of defamation, invasion of privacy, or negligence with respect to the reporting of information against any consumer reporting agency, any user of information, or any person who furnishes information to a consumer reporting agency, based on information disclosed pursuant to section 609, 610, or 615, except as to false information furnished with malice or willful intent to injure such consumer. (15 U.S.C. 1681h)

§ 611. Procedure in case of disputed accuracy

(a) If the completeness or accuracy of any item of information contained in his file is disputed by a consumer, and such dispute is directly conveyed to the consumer reporting agency by the consumer, the consumer reporting agency shall within a reasonable period of time reinvestigate and record the current status of that information unless it has reasonable grounds to believe that the dispute by the consumer is frivolous or irrelevant. If after such reinvestigation such information is found to be inaccurate or can no longer be veri-

fied, the consumer reporting agency shall promptly delete such information. The presence of contradictory information in the consumer's file does not in and of itself constitute reasonable grounds for believing the dispute is frivolous or irrelevant.

(b) If the reinvestigation does not resolve the dispute, the consumer may file a brief statement setting forth the nature of the dispute. The consumer reporting agency may limit such statements to not more than one hundred words if it provides the consumer with assistance in writing a clear summary of the dispute.

(c) Whenever a statement of a dispute is filed, unless there is reasonable grounds to believe that it is frivolous or irrevelant, the consumer reporting agency shall, in any subsequent consumer report containing the information in question, clearly note that it is disputed by the consumer and provide either the consumer's statement or a clear and accurate codification or summary thereof.

(d) Following any deletion of information which is found to be inaccurate or whose accuracy can no longer be verified or any notation as to disputed information, the consumer reporting agency shall, at the request of the consumer, furnish notification that the item has been deleted or the statement, codification or summary pursuant to subsection (b) or (c) to any person specifically designated by the consumer who has within two years prior thereto received a consumer report for employment purposes, or within six months prior thereto received a consumer report for any other purpose, which contained the deleted or disputed information. The consumer reporting agency shall clearly and conspicuously disclose to the consumer his rights to make such a request. Such disclosure shall be made at or prior to the time the information is deleted or the consumer's statement regarding the disputed information is received. (15 U.S.C. 1681i)

§ 612. Charges for certain disclosures

A consumer reporting agency shall make all disclosures pursuant to section 609 and furnish all consumer reports pursuant to section 611(d) without charge to the consumer if, within thirty days after receipt by such consumer of a notification pursuant to section 615 or notification from a debt collection agency affiliated with such consumer reporting agency stating that the consumer's credit rating may be or has been adversely affected, the consumer makes a request under section 609 or 611(d). Otherwise, the consumer reporting agency may impose a reasonable charge on the consumer for making disclosure to such consumer pursuant to section 609, the charge for which shall be indicated to the consumer prior to making disclosure; and for furnishing notifications, statements, summaries, or codifications to person designated by the consumer pursuant to section 611(d), the charge for which shall be indicated to the consumer prior to furnishing such information and shall not exceed the charge that the consumer reporting agency would impose on each designated recipient for a consumer report except that no charge may be made for notifying such persons of the deletion of information which is found to be inaccurate or which can no longer be verified. (15 U.S.C. 1681j)

§ 613. Public record information for employment purposes

A consumer reporting agency which furnishes a consumer report for employment purposes and which for that purpose compiles and reports items of information on consumers which are matters of public record and are likely to have an adverse effect upon a consumer's ability to obtain employment shall—

(1) at the time such public record information is reported to the user of such consumer report, notify the consumer of the fact that public record information is being reported by the consumer reporting agency, together with the name and address of the person to whom such information is being reported; or

(2) maintain strict procedures designed to insure that whenever public record information which is likely to have an adverse effect on a consumer's ability to obtain employment is reported it is complete and up to date. For purposes of this paragraph, items of public record relating to arrests, indictments, convictions, suits, tax liens, and outstanding judgments shall be considered up to date if the current public record status of the item at the time of the report is reported. (15 U.S.C. 1681k)

§ 614. Restrictions on investigative consumer reports

Whenever a consumer reporting agency prepares an investigative consumer report, no adverse information in the consumer report (other than information which is a matter of public record) may be included in a subsequent consumer report unless such adverse information has been verified in the process of making such subsequent consumer report, or the adverse information was received within the three-month period preceding the date the subsequent report is furnished. (15 U.S.C. 1681l)

§ 615. Requirements on users of consumer reports

(a) Whenever credit or insurance for personal, family, or household purposes, or employment involving a consumer is denied or the charge for such credit or insurance is increased either wholly or partly because of information contained in a consumer report from a consumer reporting agency, the user of the consumer report shall so advise the consumer against whom such adverse action has been taken and supply the name and address of the consumer reporting agency making the report.

(b) Whenever credit for personal, family, or household purposes involving a consumer is denied or the charge for such credit is increased either wholly or partly because of information obtained from a person other than a consumer reporting agency bearing upon the consumer's credit worthiness, credit standing, credit capacity, character, general reputation, personal characteristics, or mode of living, the user of such information shall, within a reasonable period of time, upon the consumer's written request for the reasons for such adverse action received within sixty days after learning of such adverse action, disclose the nature of the information to the consumer. The user of such information shall clearly and accurately disclose to the consumer his right to make such

written request at the time such adverse action is communicated to the consumer.

(c) No person shall be held liable for any violation of this section if he shows by a preponderance of the evidence that at the time of the alleged violation he maintained reasonable procedures to assure compliance with the provisions of subsections (a) and (b). (15 U.S.C. 1681m)

§ 616. Civil liability for willful noncompliance

Any consumer reporting agency or user of information which willfully fails to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure;

(2) such amount of punitive damages as the court may allow; and

(3) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court. (15 U.S.C. 1681n)

§ 617. Civil liability for negligent noncompliance

Any consumer reporting agency or user of information which is negligent in failing to comply with any requirement imposed under this title with respect to any consumer is liable to that consumer in an amount equal to the sum of—

(1) any actual damages sustained by the consumer as a result of the failure; [1]

(2) in the case of any successful action to enforce any liability under this section, the costs of the action together with reasonable attorney's fees as determined by the court. (15 U.S.C. 1681o)

§ 618. Jurisdiction of courts; limitation of actions

An action to enforce any liability created under this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within two years from the date on which the liability arises, except that where a defendant has materially and willfully misrepresented any information required under this title to be disclosed to an individual and the information so misrepresented is material to the establishment of the defendant's liability to that individual under this title, the action may be brought at any time within two years after discovery by the individual of the misrepresentation. (15 U.S.C. 1681p)

§ 619. Obtaining information under false pretenses

Any person who knowingly and willfully obtains information on a consumer from a consumer reporting agency under false pretenses shall be fined not more than $5,000 or imprisoned not more than one year, or both. (15 U.S.C. 1681q)

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[1] So in original. Probably should be "; and".

§ 620. Unauthorized disclosures by officers or employees

Any officer or employee of a consumer reporting agency who knowingly and willfully provides information concerning an individual from the agency's files to a person not authorized to receive that information shall be fined not more than $5,000 or imprisoned not more than one year, or both. (15 U.S.C. 1681r)

§ 621. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under the Federal Trade Commission Act by the Federal Trade Commission with respect to consumer reporting agencies and all other persons subject thereto, except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other government agency under subsection (b) hereof. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement or prohibition imposed under this title shall constitute an unfair or deceptive act or practice in commerce in violation of section 5(a) of the Federal Trade Commission Act and shall be subject to enforcement by the Federal Trade Commission under section 5(b) thereof with respect to any consumer reporting agency or person subject to enforcement by the Federal Trade Commission pursuant to this subsection, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. The Federal Trade Commission shall have such procedural, investigative, and enforcement powers, including the power to issue procedural rules in enforcing compliance with the requirements imposed under this title and to require the filing of reports, the production of documents, and the appearance of witnesses as though the applicable terms and conditions of the Federal Trade Commission Act were part of this title. Any person violating any of the provisions of this title shall be subject to the penalties and entitled to the privileges and immunities provided in the Federal Trade Commission Act as though the applicable terms and provisions thereof were part of this title.

(b) Compliance with the requirements imposed under this title with respect to consumer reporting agencies and persons who use consumer reports from such agencies shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of:

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.[1]

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan

[1] So in original. The comma probably should be a semicolon.

Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any other authority conferred on it by law. (15 U.S.C. 1681s)

§ 622. Relation to State laws

This title does not annul, alter, affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to the collection, distribution, or use of any information on consumers, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. (15 U.S.C. 1688t)

TITLE VII—EQUAL CREDIT OPPORTUNITY

Sec.
701. Prohibited discrimination.
702. Definitions.
703. Regulations.
704. Administrative enforcement.
705. Relation to State laws.
706. Civil liability.
707. Annual reports to Congress.
708. Effective date.
709. Short title.

§ 701. Prohibited discrimination; reasons for adverse action

(a) It shall be unlawful for any creditor to discriminate against any applicant, with respect to any aspect of a credit transaction—

(1) on the basis of race, color, religion, national origin, sex or marital status, or age (provided the applicant has the capacity to contract);

(2) because all or part of the applicant's income derives from any public assistance program; or

(3) because the applicant has in good faith exercised any right under the Consumer Credit Protection Act.

(b) It shall not constitute discrimination for purposes of this title for a creditor—

(1) to make an inquiry of marital status if such inquiry is for the purpose of ascertaining the creditor's rights and remedies applicable to the particular extension of credit and not to discriminate in a determination of credit-worthiness;

(2) to make an inquiry of the applicant's age or of whether the applicant's income derives from any public assistance program if such inquiry is for the purpose of determining the amount and probable continuance of income levels, credit history, or other pertinent element of credit-worthiness as provided in regulations of the Board;

(3) to use any empirically derived credit system which considers age if such system is demonstrably and statistically sound in accordance with regulations of the Board, except that in the operation of such system the age of an elderly applicant may not be assigned a negative factor or value; or

(4) to make an inquiry or to consider the age of an elderly applicant when the age of such applicant is to be used by the creditor in the extension of credit in favor of such applicant.

(c) It is not a violation of this section for a creditor to refuse to extend credit offered pursuant to—

(1) any credit assistance program expressly authorized by law for an economically disadvantaged class of persons;

(2) any credit assistance program administered by a nonprofit organization for its members or an economically disadvantaged class of persons; or

(3) any special purpose credit program offered by a profit-making organization to meet special social needs which meets standards prescribed in regulations by the Board;

if such refusal is required by or made pursuant to such program.

(d)(1) Within thirty days (or such longer reasonable time as specified in regulations of the Board for any class of credit transaction) after receipt of a completed application for credit, a creditor shall notify the applicant of its action on the application.

(2) Each applicant against whom adverse action is taken shall be entitled to a statement of reasons for such action from the creditor. A creditor satisfies this obligation by—

(A) providing statements of reasons in writing as a matter of course to applicants against whom adverse action is taken; or

(B) giving written notification of adverse action which discloses (i) the applicant's right to a statement of reasons within thirty days after receipt by the creditor of a request made within sixty days after such notification, and (ii) the identity of the person or office from which such statement may be obtained. Such statement may be given orally, if the written notification advises the applicant of his right to have the statement of reasons confirmed in writing on written request.

(3) A statement of reasons meets the requirements of this section only if it contains the specific reasons for the adverse action taken.

(4) Where a creditor has been requested by a third party to make a specific extension of credit directly or indirectly to an applicant, the notification and statement of reasons required by this subsection may be made directly by such creditor, or indirectly through

the third party, provided in either case that the identity of the creditor is disclosed.

(5) The requirements of paragraphs (2), (3), or (4) may be satisfied by verbal statements or notifications in the case of any creditor who did not act on more than one hundred and fifty applications during the calendar year preceding the calendar year in which the adverse action is taken, as determined under regulations of the Board.

(6) For purposes of this subsection, the term "adverse action" means a denial or revocation of credit, a change in the terms of an existing credit arrangement, or a refusal to grant credit in substantially the amount or on substantially the terms requested. Such term does not include a refusal to extend additional credit under an existing credit arrangement where the applicant is delinquent or otherwise in default, or where such additional credit would exceed a previously established credit limit. (15 U.S.C. 1691)

§ 702. Definitions

(a) The definitions and rules of construction set forth in this section are applicable for the purposes of this title.

(b) The term "applicant" means any person who applies to a creditor directly for an extension, renewal, or continuation of credit, or applies to a creditor indirectly by use of an existing credit plan for an amount exceeding a previously established credit limit.

(c) The term "Board" refers to the Board of Governors of the Federal Reserve System.

(d) The term "credit" means the right granted by a creditor to a debtor to defer payment of debt or to incur debts and defer its payment or to purchase property or services and defer payment therefor.

(e) The term "creditor" means any person who regularly extends, renews, or continues credit; any person who regularly arranges for the extension, renewal, or continuation of credit; or any assignee of an original creditor who participates in the decision to extend, renew, or continue credit.

(f) The term "person" means a natural person, a corporation, government or governmental subdivision or agency, trust, estate, partnership, cooperative, or association.

(g) Any reference to any requirement imposed under this title or any provision thereof includes reference to the regulations of the Board under this title or the provision thereof in question. (15 U.S.C. 1691a)

§ 703. Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. These regulations may contain but are not limited to such classifications, differentiation, or other provision, and may provide for such adjustments and exceptions for any class of transactions, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate or substantiate compliance therewith. In particular, such regulations may exempt from one or more of the provisions of this title any class of transactions not primarily for personal, family, or household purposes, if the

best copy available

Board makes an express finding that the application of such provision or provisions would not contribute substantially to carrying out the purposes of this title. Such regulations shall be prescribed as soon as possible after the date of enactment of this Act,[1] but in no event later than the effective date of this Act.[1]

(b) The Board shall establish a Consumer Advisory Council to advise and consult with it in the exercise of its functions under the Consumer Credit Protection Act and to advise and consult with it concerning other consumer related matters it may place before the Council. In appointing the members of the Council, the Board shall seek to achieve a fair representation of the interests of creditors and consumers. The Council shall meet from time to time at the call of the Board. Members of the Council who are not regular full-time employees of the United States shall, while attending meetings of such Council, be entitled to receive compensation at a rate fixed by the Board, but not exceeding $100 per day, including travel time. Such members may be allowed travel expenses, including transportation and subsistence, while away from their homes or regular place of business. (15 U.S.C. 1691b)

§ 704. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under:

(1) Section 8 of the Federal Deposit Insurance Act, an the case of—

(A) national banks, by the Comptroller of the Currency,

(B) member banks of the Federal Reserve System (other than national banks), by the Board,

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation.

(2) Section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions.

(3) The Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal Credit Union.

(4) The Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts.

(5) The Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or foreign air carrier subject to that Act.

(6) The Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(7) The Farm Credit Act of 1971, by the Farm Credit Administration with respect to any Federal land bank, Federal land

[1] So in original. Probably should be "this title".

bank association, Federal intermediate credit bank, and production credit association;

(8) The Securities Exchange Act of 1934, by the Securities and Exchange Commission with respect to brokers and dealers; and

(9) The Small Business Investment Act of 1958, by the Small Business Administration, with respect to small business investment companies.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law. The exercise of the authorities of any of the agencies referred to in subsection (a) for the purpose of enforcing compliance with any requirement imposed under this title shall in no way preclude the exercise of such authorities for the purpose of enforcing compliance with any other provision of law not relating to the prohibition of discrimination on the basis of sex or marital status with respect to any aspect of a credit transaction.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce any Federal Reserve Board regulation promulgated under this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(d) The authority of the Board to issue regulations under this title does not impair the authority of any other agency designated in this section to make rules respecting its own procedures in enforcing compliance with requirements imposed under this title. (15 U.S.C. 1691d)

§ 705. Relation to State laws

(a) A request for the signature of both parties to a marriage for the purpose of creating a valid lien, passing clear title, waiving inchoate rights to property, or assigning earnings, shall not constitute discrimination under this title: *Provided, however,* That this provision shall not be construed to permit a creditor to take sex or

marital status into account in connection with the evaluation of creditworthiness of any applicant.

(b) Consideration or application of State property laws directly or indirectly affecting creditworthiness shall not constitute discrimination for purposes of this title.

(c) Any provision of State law which prohibits the separate extension of consumer credit to each party to a marriage shall not apply in any case where each party to a marriage voluntarily applies for separate credit from the same creditor: *Provided*, That in any case where such a State law is so preempted, each party to the marriage shall be solely responsible for the debt so contracted.

(d) When each party to a marriage separately and voluntarily applies for and obtains separate credit accounts with the same creditor, those accounts shall not be aggregated or otherwise combined for purposes of determining permissible finance charges or permissible loan ceilings under the laws of any State or of the United States.

(e) Where the same act or omission constitutes a violation of this title and of applicable State law, a person aggrieved by such conduct may bring a legal action to recover monetary damages either under this title or under such State law, but not both. This election of remedies shall not apply to court actions in which the relief sought does not include monetary damages or to administrative actions.

(f) This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with, the laws of any State with respect to credit discrimination, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. The Board is authorized to determine whether such inconsistencies exist. The Board may not determine that any State law is inconsistent with any provision of this title if the Board determines that such law gives greater protection to the applicant.

(g) The Board shall by regulation exempt from the requirements of sections 701 and 702 of this title any class of credit transactions within any State if it determines that under the law of that State that class of transactions is subject to requirements substantially similar to those imposed under this title or that such law gives greater protection to the applicant, and that there is adequate provision for enforcement. Failure to comply with any requirement of such State law in any transaction so exempted shall constitute a violation of this title for the purposes of section 706. (15 U.S.C. 1691d)

§ 706. Civil liability

(a) Any creditor who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for any actual damages sustained by such applicant acting either in an individual capacity or as a member of a class.

(b) Any creditor, other than a government or governmental subdivision or agency, who fails to comply with any requirement imposed under this title shall be liable to the aggrieved applicant for punitive damages in an amount not greater than $10,000, in addition to any actual damages provided in subsection (a), except that

in the case of a class action the total recovery under this subsection shall not exceed the lesser of $500,000 or 1 per centum of the net worth of the creditor. In determining the amount of such damages in any action, the court shall consider, among other relevant factors, the amount of any actual damages awarded, the frequency and persistence of failures of compliance by the creditor, the resources of the creditor, the number of persons adversely affected, and the extent to which the creditor's failure of compliance was intentional.

(c) Upon application by an aggrieved applicant, the appropriate United States district court or any other court of competent jurisdiction may grant such equitable and declaratory relief as is necessary to enforce the requirements imposed under this title.

(d) In the case of any successful action under subsection (a), (b), or (c), the costs of the action, together with a reasonable attorney's fee as determined by the court, shall be added to any damages awarded by the court under such subsection.

(e) No provision of this title imposing liability shall apply to any act done or omitted in good faith in conformity with any official rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor, notwithstanding that after such act or omission has occurred, such rule, regulation, interpretation, or approval is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(f) Any action under this section may be brought in the appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction. No such action shall be brought later than two years from the date of the occurrence of the violation, except that—

(1) whenever any agency having responsibility for administrative enforcement under section 704 commences an enforcement proceeding within two years from the date of the occurrence of the violation,

(2) whenever the Attorney General commences a civil action under this section within two years from the date of the occurrence of the violation,

then any applicant who has been a victim of the discrimination which is the subject of such proceeding or civil action may bring an action under this section not later than one year after the commencement of that proceeding or action.

(g) The agencies having responsibility for administrative enforcement under section 704, if unable to obtain compliance with section 701, are authorized to refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted.

(h) When a matter is referred to the Attorney General pursuant to subsection (g), or whenever he has reason to believe that one or more creditors are engaged in a pattern or practice in violation of this title, the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

(i) No person aggrieved by a violation of this title and by a violation of section 805 of the Civil Rights Act of 1968 shall recover under this title and section 812 of the Civil Rights Act of 1968, if such violation is based on the same transaction.

(j) Nothing in this title shall be construed to prohibit the discovery of a creditor's credit granting standards under appropriate discovery procedures in the court or agency in which an action or proceeding is brought. (15 U.S.C. 1691e)

§ 707. Annual reports to Congress

Each year, the Board and the Attorney General shall, respectively, make reports to the Congress concerning the administration of their functions under this title, including such recommendations as the Board and the Attorney General, respectively, deem necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with the requirements of this title is being achieved, and a summary of the enforcement actions taken by each of the agencies assigned administrative enforcement responsibilities under section 704. (15 U.S.C. 1691f)

§ 708. Effective date

This title takes effect upon the expiration of one year after the date of its enactment. The amendments made by the Equal Credit Opportunity Act Amendments of 1976 shall take effect on the date of enactment thereof and shall apply to any violation occurring on or after such date, except that the amendments made to section 701 of the Equal Credit Opportunity Act shall take effect 12 months after the date of enactment. (15 U.S.C. 1691 note)

§ 709. Short title

This title may be cited as the "Equal Credit Opportunity Act". (15 U.S.C. 1691 note)

TITLE VIII—DEBT COLLECTION PRACTICES

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§ 801. Short title

This title may be cited as the "Fair Debt Collection Practices Act". (15 U.S.C. 1601 note)

§ 802. Findings and purpose

(a) There is abundant evidence of the use of abusive, deceptive, and unfair debt collection practices by many debt collectors. Abusive debt collection practices contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy.

(b) Existing laws and procedures for redressing these injuries are inadequate to protect consumers.

(c) Means other than misrepresentation or other abusive debt collection practices are available for the effective collection of debts.

(d) Abusive debt collection practices are carried on to a substantial extent in interstate commerce and through means and instrumentalities of such commerce. Even where abusive debt collection practices are purely intrastate in character, they nevertheless directly affect interstate commerce.

(e) It is the purpose of this title to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses. (15 U.S.C. 1692)

§ 803. Definitions

As used in this title—

(1) The term "Commission" means the Federal Trade Commission.

(2) The term "communication" means the conveying of information regarding a debt directly or indirectly to any person through any medium.

(3) The term "consumer" means any natural person obligated or allegedly obligated to pay any debt.

(4) The term "creditor" means any person who offers or extends credit creating a debt or to whom a debt is owed, but such term does not include any person to the extent that he receives an assignment or transfer of a debt in default solely for the purpose of facilitating collection of such debt for another.

(5) The term "debt" means any obligation or alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance, or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

(6) The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due another. Notwithstanding the exclusion provided by clause (G) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such

debts. For the purpose of section 808(6), such term also includes any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the enforcement of security interests. The term does not include—

(A) any officer or employee of a creditor while, in the name of the creditor, collecting debts for such creditor;

(B) any person while acting as a debt collector for another person, both of whom are related by common ownership or affiliated by corporate control, if the person acting as a debt collector does so only for persons to whom it is so related or affilated and if the principal business of such person is not the collection of debts;

(C) any officer or employee of the United States or any State to the extent that collecting or attempting to collect any debt is in the performance of his official duties;

(D) any person while serving or attempting to serve legal process on any other person in connection with the judicial enforcement of any debt;

(E) any nonprofit organization which, at the request of consumers, performs bona fide consumer credit counseling and assists consumers in the liquidation of their debts by receiving payments from such consumers and distributing such amounts to creditors;

(F) any attorney-at-law collecting a debt as an attorney on behalf of and in the name of a client; and

(G) any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity (i) is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement; (ii) concerns a debt which was originated by such person; (iii) concerns a debt which was not in default at the time it was obtained by such person; or (iv) concerns a debt obtained by such person as a secured party in a commercial credit transaction involving the creditor.

(7) The term "location information" means a consumer's place of abode and his telephone number at such place, or his place of employment.

(8) The term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing. (15 U.S.C. 1692a)

§ 804. Acquisition of location information

Any debt collector communicating with any person other than the consumer for the purpose of acquiring location information about the consumer shall—

(1) identify himself, state that he is confirming or correcting location information concerning the consumer, and, only if expressly requested, identify his employer;

(2) not state that such consumer owes any debt;

(3) not communicate with any such person more than once unless requested to do so by such person or unless the debt collector reasonably believes that the earlier response of such

person is erroneous or incomplete and that such person now has correct or complete location information;

(4) not communicate by post card;

(5) not use any language or symbol on any envelope or in the contents of any communication effected by the mails or telegram that indicates that the debt collector is in the debt collection business or that the communication relates to the collection of a debt; and

(6) after the debt collector knows the consumer is represented by an attorney with regard to the subject debt and has knowledge of, or can readily ascertain, such attorney's name and address, not communicate with any person other than that attorney, unless the attorney fails to respond within a reasonable period of time to communication from the debt collector.

(15 U.S.C. 1692b)

§ 805. Communication in connection with debt collection

(a) COMMUNICATION WITH THE CONSUMER GENERALLY.—Without the prior consent of the consumer given directly to the debt collector or the express permission of a court of competent jurisdiction, a debt collector may not communicate with a consumer in connection with the collection of any debt—

(1) at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer. In the absence of knowledge of circumstances to the contrary, a debt collector shall assume that the convenient time for communicating with a consumer is after 8 o'clock antimeridian and before 9 o'clock postmeridian, local time at the consumer's location;

(2) if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address, unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communication with the consumer; or

(3) at the consumer's place of employment if the debt collector knows or has reason to know that the consumer's employer prohibits the consumer from receiving such communication.

(b) COMMUNICATION WITH THIRD PARTIES.—Except as provided in section 804, without the prior consent of the consumer given directly to the debt collector, or the express permission of a court of competent jurisdiction, or as reasonably necessary to effectuate a post judgment judicial remedy, a debt collector may not communicate, in connection with the collection of any debt, with any person other than the consumer, his attorney, a consumer reporting agency if otherwise permitted by law, the creditor, the attorney of the creditor, or the attorney of the debt collector.

(c) CEASING COMMUNICATION.—If a consumer notifies a debt collector in writing that the consumer refuses to pay a debt or that the consumer wishes the debt collector to cease further communication with the consumer, the debt collector shall not communicate further with the consumer with respect to such debt, except—

(1) to advise the consumer that the debt collector's further efforts are being terminated:

(2) to notify the consumer that the debt collector or creditor may invoke specified remedies which are ordinarily invoked by such debt collector or creditor; or

(3) where applicable, to notify the consumer that the debt collector or creditor intends to invoke a specified remedy.

If such notice from the consumer is made by mail, notification shall be complete upon receipt.

(d) For the purpose of this section, the term "consumer" includes the consumer's spouse, parent (if the consumer is a minor), guardian, executor, or administrator. (15 U.S.C. 1692c)

§ 806. Harassment or abuse

A debt collector may not engage in any conduct the natural consequence of which is to harass, oppress, or abuse any person in connection with the collection of a debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The use or threat of use of violence or other criminal means to harm the physical person, reputation, or property of any person.

(2) The use of obscene or profane language or language the natural consequence of which is to abuse the hearer or reader.

(3) The publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency or to persons meeting the requirements of section 603(f) or 604(3) of this Act.

(4) The advertisement for sale of any debt to coerce payment of the debt.

(5) Causing a telephone to ring or engaging any person in telephone conversation repeatedly or continuously with intent to annoy, abuse, or harass any person at the called number.

(6) Except as provided in section 804, the placement of telephone calls without meaningful disclosure of the caller's identity. (15 U.S.C. 1692d)

§ 807. False or misleading representations

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The false representation or implication that the debt collector is vouched for, bonded by, or affiliated with the United States or any State, including the use of any badge, uniform, or facsimile thereof.

(2) The false representation of—

(A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

(4) The representation or implication that nonpayment of any debt will result in the arrest or imprisonment of any person or the seizure, garnishment, attachment, or sale of any property or wages of any person unless such action is lawful and the debt collector or creditor intends to take such action.

(5) The threat to take any action that cannot legally be taken or that is not intended to be taken.

(6) The false representation or implication that a sale, referral, or other transfer of any interest in a debt shall cause the consumer to—

(A) lose any claim or defense to payment of the debt; or

(B) become subject to any practice prohibited by this title.

(7) The false representation or implication that the consumer committed any crime or other conduct in order to disgrace the consumer.

(8) Communicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.

(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer.

(11) Except as otherwise provided for communications to acquire location information under section 804, the failure to disclose clearly in all communications made to collect a debt or to obtain information about a consumer, that the debt collector is attempting to collect a debt and that any information obtained will be used for that purpose.

(12) The false representation or implication that accounts have been turned over to innocent purchasers for value.

(13) The false representation or implication that documents are legal process.

(14) The use of any business, company, or organization name other than the true name of the debt collector's business, company, or organization.

(15) The false representation or implication that documents are not legal process forms or do not require action by the consumer.

(16) The false representation or implication that a debt collector operates or is employed by a consumer reporting agency as defined by section 603(f) of this Act. (15 U.S.C. 1692e)

§ 808. Unfair practices

A debt collector may not use unfair or unconscionable means to collect or attempt to collect any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

(1) The collection of any amount (including any interest, fee, charge, or expense incidental to the principal obligation) unless such amount is expressly authorized by the agreement creating the debt or permitted by law.

(2) The acceptance by a debt collector from any person of a check or other payment instrument postdated by more than five days unless such person is notified in writing of the debt collector's intent to deposit such check or instrument not more than ten nor less than three business days prior to such deposit.

(3) The solicitation by a debt collector of any postdated check or other postdated payment instrument for the purpose of threatening or instituting criminal prosecution.

(4) Depositing or threatening to deposit any postdated check or other postdated payment instrument prior to the date on such check or instrument.

(5) Causing charges to be made to any person for communications by concealment of the true purpose of the communication. Such charges include, but are not limited to, collect telephone calls and telegram fees.

(6) Taking or threatening to take any nonjudicial action to effect dispossession or disablement of property if—

(A) there is no present right to possession of the property claimed as collateral through an enforceable security interest;

(B) there is no present intention to take possession of the property; or

(C) the property is exempt by law from such dispossession or disablement.

(7) Communicating with a consumer regarding a debt by post card.

(8) Using any language or symbol, other than the debt collector's address, on any envelope when communicating with a consumer by use of the mails or by telegram, except that a debt collector may use his business name if such name does not indicate that he is in the debt collection business. (15 U.S.C. 1692f)

§ 809. Validation of debts

(a) Within five days after the initial communication with a consumer in connection with the collection of any debt, a debt collector shall, unless the following information is contained in the initial communication or the consumer has paid the debt, send the consumer a written notice containing—

(1) the amount of the debt;

(2) the name of the creditor to whom the debt is owed;

(3) a statement that unless the consumer, within thirty days after receipt of the notice, disputes the validity of the debt, or any portion thereof, the debt will be assumed to be valid by the debt collector;

(4) a statement that if the consumer notifies the debt collector in writing within the thirty-day period that the debt, or any portion thereof, is disputed, the debt collector will obtain verification of the debt or a copy of a judgment against the

consumer and a copy of such verification or judgment will be mailed to the consumer by the debt collector; and

(5) a statement that, upon the consumer's written request within the thirty-day period, the debt collector will provide the consumer with the name and address of the original creditor, if different from the current creditor.

(b) If the consumer notifies the debt collector in writing within the thirty-day period described in subsection (a) that the debt, or any portion thereof, is disputed, or that the consumer requests the name and address of the original creditor, the debt collector shall cease collection of the debt, or any disputed portion thereof, until the debt collector obtains verification of the debt or a copy of a judgment, or the name and address of the original creditor, and a copy of such verification or judgment, or name and address of the original creditor, is mailed to the consumer by the debt collector.

(c) The failure of a consumer to dispute the validity of a debt under this section may not be construed by any court as an admission of liability by the consumer. (15 U.S.C. 1692g)

§ 810. Multiple debts

If any consumer owes multiple debts and makes any single payment to any debt collector with respect to such debts, such debt collector may not apply such payment to any debt which is disputed by the consumer and where applicable, shall apply such payment in accordance with the consumer's directions. (15 U.S.C. 1692h)

§ 811. Legal actions by debt collectors

(a) Any debt collector who brings any legal action on a debt against any consumer shall—

(1) in the case of an action to enforce an interest in real property securing the consumer's obligation, bring such action only in a judicial district or similar legal entity in which such real property is located; or

(2) in the case of an action not described in paragraph (1), bring such action only in the judicial district or similar legal entity—

(A) in which such consumer signed the contract sued upon; or

(B) in which such consumer resides at the commencement of the action.

(b) Nothing in this title shall be construed to authorize the bringing of legal actions by debt collectors. (15 U.S.C. 1692i)

§ 812. Furnishing certain deceptive forms

(a) It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

(b) Any person who violates this section shall be liable to the same extent and in the same manner as a debt collector is liable under section 813 for failure to comply with a provision of this title. (15 U.S.C. 1692j)

§ 813. Civil liability

(a) Except as otherwise provided by this section, any debt collector who fails to comply with any provision of this title with respect to any person is liable to such person in an amount equal to the sum of—

(1) any actual damage sustained by such person as a result of such failure;

(2)(A) in the case of any action by an individual, such additional damages as the court may allow, but not exceeding $1,000; or

(B) in the case of a class action, (i) such amount for each named plaintiff as could be recovered under subparagraph (A), and (ii) such amount as the court may allow for all other class members, without regard to a minimum individual recovery, not to exceed the lesser of $500,000 or 1 per centum of the net worth of the debt collector; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court. On a finding by the court that an action under this section was brought in bad faith and for the purpose of harassment, the court may award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, and the extent to which such noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance by the debt collector, the nature of such noncompliance, the resources of the debt collector, the number of persons adversely affected, and the extent to which the debt collector's noncompliance was intentional.

(c) A debt collector may not be held liable in any action brought under this title if the debt collector shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) An action to enforce any liability created by this title may be brought in any appropriate United States district court without regard to the amount in controversy, or in any other court of competent jurisdiction, within one year from the date on which the violation occurs.

(e) No provision of this section imposing any liability shall apply to any act done or omitted in good faith in conformity with any advisory opinion of the Commission, notwithstanding that after such act or omission has occurred, such opinion is amended, rescinded, or determined by judicial or other authority to be invalid for any reason. (15 U.S.C. 1692k)

§ 814. Administrative enforcement

(a) Compliance with this title shall be enforced by the Commission, except to the extent that enforcement of the requirements imposed under this title is specifically committed to another agency under subsection (b). For purpose of the exercise by the Commission of its functions and powers under the Federal Trade Commission Act, a violation of this title shall be deemed an unfair or deceptive act or practice in violation of that Act. All of the functions and powers of the Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person with this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act, including the power to enforce the provisions of this title in the same manner as if the violation had been a violation of a Federal Trade Commission trade regulation rule.

(b) Compliance with any requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Federal Reserve Board; and

(C) banks the deposits or accounts of which are insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(4) the Acts to regulate commerce, by the Interstate Commerce Commission with respect to any common carrier subject to those Acts;

(5) the Federal Aviation Act of 1958, by the Civil Aeronautics Board with respect to any air carrier or any foreign air carrier subject to that Act; and

(6) the Packers and Stockyards Act, 1921 (except as provided in section 406 of that Act), by the Secretary of Agriculture with respect to any activities subject to that Act.

(c) For the purpose of the exercise by any agency referred to in subsection (b) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (b), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title any

other authority conferred on it by law, except as provided in subsection (d).

(d) Neither the Commission nor any other agency referred to in subsection (b) may promulgate trade regulation rules or other regulations with respect to the collection of debts by debt collectors as defined in this title. (15 U.S.C. 1692l)

§ 815. Reports to Congress by the Commission

(a) Not later than one year after the effective date of this title and at one-year intervals thereafter, the Commission shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Commission deems necessary or appropriate. In addition, each report of the Commission shall include its assessment of the extent to which compliance with this title is being achieved and a summary of the enforcement actions taken by the Commission under section 814 of this title.

(b) In the exercise of its functions under this title, the Commission may obtain upon request the views of any other Federal agency which exercises enforcement functions under section 814 of this title. (15 U.S.C. 1692m)

§ 816. Relation to State laws

This title does not annul, alter, or affect, or exempt any person subject to the provisions of this title from complying with the laws of any State with respect to debt collection practices, except to the extent that those laws are inconsistent with any provision of this title, and then only to the extent of the inconsistency. For purposes of this section, a State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection provided by this title. (15 U.S.C. 1692n)

§ 817. Exemption for State regulation

The Commission shall by regulation exempt from the requirements of this title any class of debt collection practices within any State if the Commission determines that under the law of that State that class of debt collection practices is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement. (15 U.S.C. 1692o)

§ 818. Effective date

This title takes effect upon the expiration of six months after the date of its enactment, but section 809 shall apply only with respect to debts for which the initial attempt to collect occurs after such effective date. (15 U.S.C. 1692 note)

TITLE IX—ELECTRONIC FUND TRANSFERS

§ 901. Short title

This title may be cited as the "Electronic Fund Transfer Act". (15 U.S.C. 1601 note)

§ 902. Findings and purpose

(a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) It is the purpose of this title to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights. (15 U.S.C. 1693)

§ 903. Definitions

As used in this title—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(3) the term "Board" means the Board of Governors of the Federal Reserve System;

(4) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term "consumer" means a natural person;

(6) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account: [1]

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution

[1] So in original. The colon probably should be a semicolon.

on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the Board;

(7) the term "electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(8) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution. (15 U.S.C. 1693a)

§ 904. Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. In prescribing such regulations, the Board shall:

(1) consult with the other agencies referred to in section 917 and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board

(b) The Board shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 905 and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5, United States Code. With respect to the disclosures required by section 905(a) (3) and (4), the Board shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(c) Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Board shall by regulation modify the requirements imposed by this title on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this title.

(d) In the event that electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this title are made applicable to such persons and services. (15 U.S.C. 1693b)

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§ 905. Terms and conditions of transfers

(a) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(2) the telephone number and address of the person or office to be notified in the event the consumer believes than [1] an unauthorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer's right to receive documentation of electronic fund transfers under section 906;

(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 908 and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 910; and

(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons.

(b) A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3), the Board shall require subsequent notification if such a change is made permanent.

(c) For any account of a consumer made accessible to electronic fund transfer prior to the effective date of this title, the informa-

[1] So in original. Probably should be "that".

tion required to be disclosed to the consumer under subsection (a) shall be disclosed not later than the earlier of—

(1) the first periodic statement required by section 906(c) after the effective date of this title; or

(2) thirty days after the effective date of this title. (15 U.S.C. 1693c)

§ 906. Documentation of transfers; periodic statements

(a) For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

(1) the amount involved and date the transfer is initiated;

(2) the type of transfer;

(3) the identity of the consumer's account with the financial institution from which or to which funds are transferred;

(4) the identity of any third party to whom or from whom funds are transferred; and

(5) the location or identification of the electronic terminal involved.

(b) For a consumer's account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Board. The means of notice elected shall be disclosed to the consumer in accordance with section 905.

(c) A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsections (d) and (e), such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

(1) with regard to each electronic fund transfer during the period, the information described in subsection (a), which may be provided on an accompanying document;

(2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;

(3) the balances in the consumer's account at the beginning of the period and at the close of the period; and

(4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption "Direct Inquires To:" or other similar language indicating that

the address and number are to be used for such inquiries or notices.

(d) In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (c), upon presentation of the passbook provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

(e) In the case of a consumer's account, other than a passbook account, which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (c).

(f) In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an electronic fund transfer was made to another person shall be admissible as evidence of such transfer and shall constitute prima facie proof that such transfer was made. (15 U.S.C. 1693d)

§ 907. Preauthorized transfers

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(b) In the case of preauthorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Board, of the amount to be transferred and the scheduled date of the transfer. (15 U.S.C. 1693e)

§ 908. Error resolution

(a) If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 906 (a), (c), or (d) or notification pursuant to section 906(b), receives oral or written notice in which the consumer—

(1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

(2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 906(b), the consumer's account, contains an error and the amount of such error; and

(3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred,

the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c), nor shall the financial institution be liable under subsection (e) if the written confirmation is not received within the ten-day period referred to in the previous sentence.

(b) If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 909, including the crediting of interest where applicable.

(c) If a financial institution receives notice of an error in the manner and within the time period specified in subsection (a), it may, in lieu of the requirements of subsections (a) and (b), within ten business days after receiving such notice provisionally recredit the consumer's account for the amount alleged to be in error, subject to section 909, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than forty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

(d) If the financial institution determines after its investigation pursuant to subsection (a) or (c) that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(e) If in any action under section 915, the court finds that—

(1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c), and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer's account was not in error; or

(2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation,

then the consumer shall be entitled to treble damages determined under section 915(a)(1).

(f) For the purpose of this section, an error consists of—

(1) an unauthorized electronic fund transfer;

(2) an incorrect electronic fund transfer from or to the consumer's account;

(3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;

(4) a computational error by the financial institution;

(5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this title; or

(7) any other error described in regulations of the Board. (15 U.S.C. 1693f)

§ 909. Consumer liability for unauthorized transfers

(a) A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other means of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other meanas [1] of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of—

(1) $50; or

(2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 906. In addition, reimbursement need not be made to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a

[1] So in original. Probably should be "means".

longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of $500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

(b) In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) have been met, and, if the transfer was initiated after the effective date of section 905, that the disclosures required to be made to the consumer under section 905(a) (1) and (2) were in fact made in accordance with such section.

(c) In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 103(e) of this Act pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(d) Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

(e) Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer. (15 U.S.C. 1693g)

§ 910. Liability of financial institutions

(a) Subject to subsections (b) and (c), a financial institution shall be liable to a consumer for all damages proximately caused by—

(1) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(A) the consumer's account has insufficient funds;

(B) the funds are subject to legal process or other encumbrance restricting such transfer;

(C) such transfer would exceed an established credit limit;

(D) an electronic terminal has insufficient cash to complete the transaction; or

(E) as otherwise provided in regulations of the Board;

(2) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financal [1] institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's ac-

[1] So in original. Probably should be "financial".

count which would have provided sufficient funds to make the transfer, and

(3) the financial institution's failure to stop payment of a preauthorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of the account.

(b) A financial institution shall not be liable under subsection (a)(1) or (2) if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from—

(1) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

(2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

(c) In the case of a failure described in subsection (a) which was not intentional and which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved. (15 U.S.C. 1693h)

§ 911. Issuance of cards or other means of access

(a) No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Notwithstanding the provisions of subsection (a), a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

(1) such card, code, or other means of access is not validated;

(2) such distribution is accompanied by a complete disclosure, in accordance with section 905, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;

(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) For the purpose of subsection (b), a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer. (15 U.S.C. 1693i)

§ 912. Suspension of obligations

If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer. (15 U.S.C. 1693j)

§ 913. Compulsory use of electronic fund transfers

No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit. (15 U.S.C. 1693k)

§ 914. Waiver of rights

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this title. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this title or a waiver given in settlement of a dispute or action. (15 U.S.C. 1693l)

§ 915. Civil liability

(a) Except as otherwise provided by this section and section 910, any person who fails to comply with any provision of this title with respect to any consumer, except for an error resolved in accordance with section 908, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant fac-

tors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Except as provided in section 910, a person may not be held liable in any action brought under this section for a violation of this title if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) No provision of this section or section 916 imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) A person has no liability under this section for any failure to comply with any requirement under this title if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this title, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 910.

(f) On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation. (15 U.S.C. 1693m)

§ 916. Criminal liability

(a) Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this title or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this title;

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports, money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowingly the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) As used in this section, the term "debit instrument" means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer. (15 U.S.C. 1693n)

§ 917. Administrative enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.[1]

(4) the Federal Aviation Act of 1958, by the Civil Aeronautics Board, with respect to any air carrier or foreign air carrier subject to that Act; and

(5) the Securities Exchange Act of 1934, by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act. (15 U.S.C. 1693o)

§ 918. Reports to Congress

(a) Not later than twelve months after the effective date of this title and at one-year intervals thereafter, the Board shall make re-

[1] So in original. The period probably should be a semicolon.

ports to the Congress concerning the administration of its functions under this title, including such recommendations as the Board deems necessary and appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with this title is being achieved, and a summary of the enforcement actions taken under section 917 of this title. In such report, the Board shall particularly address the effects of this title on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection.

(b) In the exercise of its functions under this title, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of persons subject to this title. (15 U.S.C. 1693p)

§ 919. Relation to State laws

This title does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this title, and then only to the extent of the inconsistency. A State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection afforded by this title. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of the State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This title does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply. (15 U.S.C. 1693q)

§ 920. Exemption for State regulation

The Board shall by regulation exempt from the requirements of this title any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement. (15 U.S.C. 1693r)

§ 921. Effective date

This title takes effect upon the expiration of eighteen months from the date of its enactment, except that sections 909 and 911 take effect upon the expiration of ninety days after the date of enactment. (15 U.S.C. 1693 note)

○

98th Congress, 1st Session - - - - - - House Document No. 98–47

SUPPLEMENTAL SUMMARY OF THE BUDGET FOR FISCAL YEAR 1984

COMMUNICATION

FROM

THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT

TRANSMITTING

THE REQUIRED SUPPLEMENTAL SUMMARY OF THE PRESIDENT'S FISCAL 1984 BUDGET, PURSUANT TO SECTION 201 OF THE BUDGET AND ACCOUNTING ACT OF 1921, AS AMENDED

APRIL 13, 1983.—Referred to the Committee on Appropriations and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

11-012 O WASHINGTON: 1983

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

The Speaker

of the House of Representatives

Sir:

Section 201 of the Budget and Accounting Act of 1982, as amended, requires that the President transmit to the Congress in April of each year revised estimates of the President's budget. The revisions to the 1984 budget contain revised budget summaries and projections for fiscal years 1983-1988. The revisions reflect enactment of the jobs bill and the social security reform package as well as other policy changes resulting from Presidential initiatives or completed Congressional action. The revisions also include changes due to revised economic assumptions and technical reestimates since the budget was issued.

At the President's direction, I have the honor to transmit herewith the required supplemental summary of the fiscal year 1984 budget.

Respectfully,

David A. Stockman

David A. Stockman
Director

Enclosure

IDENTICAL LETTER SENT TO THE PRESIDENT OF THE SENATE.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

FOR IMMEDIATE RELEASE

CURRENT BUDGET ESTIMATES

APRIL 1983

(V)

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GENERAL NOTES

1. All years referred to are fiscal years, unless otherwise noted.

2. Details in the tables and text of this document may not add to the totals due to rounding.

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INTRODUCTION

The Congressional Budget Act of 1974 requires the President to transmit to the Congress in April of each year a report updating the previous budget. This report fulfills this requirement.

The report contains revised budget estimates for 1983 through 1988. The revisions are due largely to revised economic assumptions and technical reestimates since the budget was issued, and enactment of the jobs bill and social security reform. The revised estimates also include proposed offsets to the jobs bill that would minimize its impact on the multi-year budget deficit.

The current estimates assume somewhat different economic projections than were in the January budget. Economic conditions in recent months have been more favorable than was assumed earlier.

BUDGET TOTALS

Table 1 compares the revised budget totals to the January estimates.

The deficit in 1983 is currently estimated to be $210.2 billion, $2.5 billion more than the January budget estimate. This increase is the net result of a $0.8 billion increase in receipts, and a $3.3 billion increase in outlays, largely as a result of the jobs bill.

The deficit in 1984 is now estimated to be $190.2 billion, $1.5 billion more than the January estimate. This increase is due to decreases in receipts that exceed the decreases in outlays. Outlays in 1984 are now estimated to be $843.9 billion, $4.6 billion less than the January estimate. The current estimate of receipts is $653.7 billion, $6.0 billion less than the January estimate.

The revised estimates of the deficits for 1985 through 1988 are lower than in the January budget.

Table 1.--BUDGET TOTALS
(in billions of dollars)

	Receipts	Outlays	Deficit (-)
1982 actual	617.8	728.4	-110.6
1983 estimate:			
January budget	597.5	805.2	-207.7
Current	598.3	808.5	-210.2
1984 estimate:			
January budget	659.7	848.5	-188.8
Current	653.7	843.9	-190.2
1985 estimate:			
January budget	724.3	918.5	-194.2
Current	732.4	917.0	-184.6
1986 estimate:			
January budget	841.9	989.6	-147.7
Current	843.8	988.4	-144.6
1987 estimate:			
January budget	916.3	1,058.4	-142.1
Current	921.3	1,057.9	-136.6
1988 estimate:			
January budget	1,010.3	1,126.9	-116.7
Current	1,022.9	1,125.3	-102.4

ECONOMIC ASSUMPTIONS

The economic assumptions used for these budget estimates have been revised since January in order to reflect actual data for the end of 1982 and the beginning of 1983. The new assumptions appear in Table 2. They show for this year a stronger economic recovery than anticipated in January, and lower inflation. Interest rate assumptions remain unchanged.

The Administration now expects real GNP to grow 4.7% from the fourth quarter of 1982 to the fourth quarter of 1983, compared to 3.1% assumed in January. Unemployment is expected to decline from its current rate of 10.1% to 9.7% by the end of 1983, compared to 10.4% projected in January. Inflation continues to abate; the Consumer Price Index is now projected to increase just 2.5% from the fourth quarter of 1982 to the fourth quarter of 1983, compared to 5.0% projected in January.

For 1984 and beyond, the assumptions for real growth and inflation are the same as in January. Unemployment rates are slightly lower, reflecting the stronger economic recovery in 1983.

TABLE 2.--ECONOMIC ASSUMPTIONS
(calendar years; dollar amounts in billions)

	Actual 1982	Estimates 1983	1984	1985	1986	1987	1988
Major economic indicators:							
Gross national product (percent change, fourth quarter over fourth quarter):							
Current dollars	3.5	9.3	9.2	9.0	8.7	8.7	8.6
Constant (1972) dollars	-0.9	4.7	4.0	4.0	4.0	4.0	4.0
GNP deflator (percent change, fourth quarter over fourth quarter)	4.4	4.5	5.0	4.8	4.5	4.5	4.4
Consumer Price Index (percent change, fourth quarter over fourth quarter) 1/	4.5	2.5	4.4	4.8	4.5	4.5	4.4
Unemployment rate (percent, fourth quarter) 2/	10.5	9.7	8.8	8.2	7.4	6.7	5.9
Annual economic assumptions:							
Gross national product:							
Current dollars:							
Amount	3,059	3,285	3,592	3,918	4,262	4,633	5,032
Percent change, year over year	4.1	7.4	9.4	9.1	8.8	8.7	8.6
Constant (1972) dollars:							
Amount	1,477	1,519	1,585	1,648	1,714	1,783	1,854
Percent change, year over year	-1.7	2.9	4.3	4.0	4.0	4.0	4.0
Incomes:							
Personal income	2,570	2,740	2,955	3,185	3,431	3,718	4,033
Wages and salaries	1,561	1,650	1,786	1,938	2,094	2,273	2,473
Corporate profits	172	178	219	253	298	344	369
Price level:							
GNP deflator:							
Level (1972 = 100), annual average	207.1	216.2	226.6	237.7	248.7	259.9	271.4
Percent change, year over year	5.9	4.4	4.8	4.9	4.6	4.5	4.4
Consumer Price Index 1/:							
Level (1967 = 100), annual average	288.6	296.9	309.1	323.3	338.2	353.4	369.1
Percent change, year over year	6.0	2.9	4.1	4.6	4.6	4.5	4.4
Unemployment rates:							
Total, annual average 2/	9.5	10.0	9.1	8.4	7.7	7.0	6.2
Insured, annual average 3/	4.7	4.4	4.1	3.8	3.5	3.1	2.8
Federal pay raise, October (percent) 4/	4.0	---	5.6	5.8	5.6	5.6	5.5
Interest rate, 91-day Treasury bills (percent) 5/	10.7	8.0	7.9	7.4	6.8	6.5	6.1
Interest rate, 10-year Treasury notes (percent)	13.0	10.2	9.8	9.0	8.0	7.4	6.7

1/ CPI for urban wage earners and clerical workers. Two versions of the CPI are published. The index shown here is that currently used, as required by law, in calculating automatic cost-of-living increases for indexed Federal programs.

2/ Percent of total labor force, including armed forces stationed in the U.S.

3/ This indicator measures unemployment under State regular unemployment insurance as a percentage of covered employment under that program. It does not include recipients of extended benefits under that program.

4/ General schedule pay raises become effective in October -- the first month of the fiscal year. Thus, the October 1984 pay raise will set new pay scales that will be in effect during fiscal year 1985. On a current services basis, the Federal pay raise in October 1983 would be 4.3%.

5/ Average rate on new issues within period, on a bank discount basis. The projections assume, by convention, that interest rates decline with the rate of inflation. They do not represent a forecast of interest rates.

RECEIPTS

The current estimate of 1983 receipts is $598.3 billion, which is $0.8 billion greater than the January budget estimate. Receipts in 1984 are estimated at $653.7 billion, which is $6.0 billion below the January estimate of $659.7 billion. Estimates of receipts for 1985 through 1988 have been revised upward by $1.9 billion to $12.7 billion. These revisions are the net effect of policy changes, the revised economic assumptions, and technical reestimates.

Table 3.--CHANGE IN BUDGET RECEIPTS
(in billions of dollars)

	1983	1984	1985	1986	1987	1988
January budget estimate.....	597.5	659.7	724.3	841.9	916.3	1,010.3
Changes due to:						
Policy:						
Social security reform.....	---	-2.5	2.2	-0.5	-0.2	0.1
Contingency tax plan.....	---	---	---	-4.2	-2.8	-2.3
End-of-year withholding....	-0.5	-3.0	-0.8	-1.1	-1.3	-1.4
Other.....	*	-0.7	0.6	*	*	*
Subtotal, policy changes.....	-0.5	-6.2	2.0	-5.8	-4.3	-3.6
Economic assumptions.....	1.1	0.4	6.2	8.3	9.2	15.3
Technical reestimates.....	0.2	-0.3	-0.2	-0.5	0.1	0.9
Total, changes	0.8	-6.0	8.0	1.9	5.0	12.7
Current estimate....	598.3	653.7	732.4	843.8	921.3	1,022.9

* $50 million or less.

Policy changes.--Substitution of the social security reform legislation for the recommendation of the National Commission on Social Security Reform reflected in the January budget reduces receipts by $2.5 billion in 1984 and increases receipts by $2.2 billion in 1985. Receipts are changed by smaller amounts in subsequent years. The major differences between the reform legislation and the recommendation reflected in the budget include the following:

- Offset against rescheduled portion of Old Age and Survivors and Disability Insurance (OASDI) payroll tax rate.--The combined employer-employee OASDI tax rate is currently scheduled to increase from 10.8% to 11.4% on January 1, 1985 and to 12.4% on January 1, 1990. Under the reform legislation the rate will increase to 11.4% on January 1, 1984, 12.12% on January 1, 1988, and 12.4% on January 1, 1990. For 1984, the legislation provides employees a tax credit against social security payroll taxes equal to 0.3% of taxable wages, the rescheduled portion of the employee tax rate. The National Commission proposed the same credit, but against individual income taxes. This difference significantly changes the timing of receipt collections in 1984 and 1985.

- Offset against the increase in the self-employment Old Age and Survivors and Disability and Hospital Insurance (OASDHI) payroll tax rate.--Self-employed individuals currently pay 75% of the combined employer-employee OASDI tax rate and 50% of the combined HI tax rate. Under the reform legislation self-employed individuals will be required to pay the combined employer-employee OASDHI tax rate effective January 1, 1984. However, the legislation reduces the increase through a credit against the payroll tax equal to 2.7% of taxable wages in 1984, 2.3% in 1985, and 2.0% in 1986 through 1989. Under the recommendation of the National Commission, self-employed individuals would have continued to pay 50% of the combined HI tax rate but would have been required to pay the combined employer-employee OASDI tax rate; one-half of the combined OASDI tax rate would have been deductible as a business cost in calculating taxable income.

- Taxation of social security benefits.--Social security benefits currently are exempt from the Federal income tax. Under the reform legislation, a portion of social security benefits will be subject to tax if the sum of adjusted gross income from non-social security sources and 50% of social security benefits exceeds $25,000 for a single taxpayer and $32,000 for a married couple filing a joint return. This differs from the recommendation of

the National Commission, which proposed that single taxpayers with more than $20,000 ($25,000 for married couples filing a joint return) of adjusted gross income from non-social security sources be required to include 50% of their social security benefits in adjusted gross income.

A contingency tax plan, to become effective October 1, 1985 if economic growth sufficient to limit the deficit to 2 1/2% of GNP does not materialize, was proposed in the January budget. The budget estimates of the effect of this plan on receipts were based on a 5% surcharge on individual income tax liability and a $7 per barrel excise tax on oil. The current estimates reflect a 5% surcharge on individual and corporation income tax liability and a $5 per barrel excise tax on oil. These changes in the proposed contingency tax plan reduce receipts by $4.2 billion in 1986, $2.8 billion in 1987, and $2.3 billion in 1988.

Under the Tax Equity and Fiscal Responsibility Act of 1982, withholding at the rate of 10% is required on interest and dividend payments made after June 30, 1983. Withholding must occur when the interest and dividend income is paid or credited. While this provision remains in effect, regulations have been issued that will allow end-of-year withholding on selected interest income. This means that 10% of the interest paid or credited after June 30, 1983 must be withheld, but the withholding may occur at the end of the calendar year rather than when the interest is paid or credited. This modification of the timing of withholding reduces receipts by $0.5 billion in 1983, $3.0 billion in 1984, and $0.8 billion to $1.4 billion in each subsequent year.

Economic assumptions.--The revised economic assumptions increase receipts by relatively small amounts in 1983 ($1.1 billion) and 1984 ($0.4 billion). In 1985 to 1988, however the upward revisions are much larger, ranging from $6.2 billion in 1985 to $15.3 billion by 1988. These changes are the net effect of higher income and payroll taxes reflecting higher nominal incomes, partially offset by lower windfall profit taxes due to lower projected oil prices.

Technical reestimates.--Technical reestimates, primarily based on collection experience to date, change receipts by relatively small amounts in each year.

OUTLAYS

Changes in outlays are due to policy changes, revised economic assumptions and technical reestimates. Table 4 shows the major revisions.

Policy changes.--Since January, policy changes, largely completed Congressional action, have caused estimated outlays to be $3.1 billion higher in 1983 and $2.9 billion higher in 1984. The major reason for the increase was the jobs bill.

The President supported and recently signed the jobs bill (Public Law 98-8), which provides for jobs funding (Title I); commodity distribution and food assistance (Title II); and urgent supplementals for unemployment benefits, the Commodity Credit Corporation (CCC) and the Small Business Administration (Title III). Funds provided by this legislation will generate additional jobs, particularly in areas with high unemployment. Although economic recovery is underway, unemployment remains very high, and the jobs bill will provide added employment until the full effect of recovery is felt.

The outlay impact of the jobs funding (Title I) occurs primarily in 1983 and 1984, increasing outlays by $4.3 billion for these two years. Much of this is from accelerating spending for construction or for other programs that would have occurred later. The increases in outlays affect many different programs in numerous agencies. For 1984, the major outlay increases occur for community development block grants ($500 million), highways ($451 million), and energy conservation ($100 million). A list of the major changes is shown in Summary Table 14.

For commodity distribution and food assistance (Title II), outlay increases are estimated to be $216 million from 1983 through 1987.

Increases resulting from the urgent supplementals (Title III) alter the January estimates only for the Small Business Administration (SBA), since the spending for other items in Title III (unemployment benefits and CCC) were included in the January budget. Outlays for SBA are expected to increase $0.2 billion in 1983 as a result of this legislation.

Table 4.--CHANGE IN BUDGET OUTLAYS
(in billions of dollars)

	Estimates					
	1983	1984	1985	1986	1987	1988
January budget	805.2	848.5	918.5	989.6	1058.4	1125.9
Changes due to:						
Policy:						
P.L. 98-8:						
Jobs funding (Title I)	1.9	2.4	1.0	0.3	0.2	0.1
Title II	*	0.1	*	*	*	---
Title III	0.2	---	---	---	---	---
Offsets to jobs funding (proposed)	---	-0.4	-0.6	-0.6	-0.7	-0.6
H.R. 1900 1/						
Social security	*	*	*	*	*	*
Unemployment compensation	1.0	0.2	---	---	---	---
SSI	0.1	0.3	0.5	0.5	0.6	0.6
Medicare and medicaid	*	0.1	0.3	0.3	0.3	0.3
Other	-0.1	0.2	0.2	0.3	0.4	0.5
Subtotal, policy	3.1	2.9	1.5	0.9	0.8	0.9
Revised economic assumptions:						
Social security	0.3	-1.4	-2.8	-2.8	-3.6	-4.3
Medicare	*	-0.3	-0.3	-0.6	-1.0	-1.2
Food stamps	-0.1	-0.6	-0.8	-0.7	-0.8	-0.8
Unemployment compensation	-5.4	-4.4	-2.3	-2.1	-2.2	-2.0
OCS receipts	1.3	1.9	2.7	3.0	3.7	3.9
Other	0.4	-0.3	-0.5	-0.7	-0.5	-0.4
Subtotal, economic	-3.6	-5.1	-4.0	-4.0	-4.5	-4.7
Technical reestimates:						
CCC	3.0	-2.5	---	---	---	---
Other	1.8	1.0	1.1	0.9	0.7	0.6
Net interest 2/	-0.9	-0.9	-0.2	1.1	2.3	1.6
Total, changes	3.3	-4.6	-1.6	-1.1	-0.6	-1.7
Current budget estimates	808.5	843.9	917.0	988.4	1057.9	1125.3

* $50 million or less.
1/ 1983 Social Security Amendments.
2/ Includes effect of revised borrowing requirements and technical reestimates.

The Administration supported the jobs bill with the understanding that the bill would, in large measure, accelerate work scheduled to be done later. The expressed intent was to minimize the impact of the initiative on the multi-year budget deficit. Accordingly, the Administration is submitting proposed reductions that would offset $0.4 billion of the outlay increase in 1984 and $3.0 billion for 1984-1988. The major programs that are affected for 1984-1988 are highways ($-0.6 billion), community development grants ($-0.6 billion), and Department of Defense family housing ($-0.2 billion). A complete listing of these offsets is shown in Table 15.

Another policy change since January is the 1983 Social Security Amendments. The Amendments made some relatively minor changes in the National Commission on Social Security Reform recommendations included in the January budget for social security outlays. Changes in these estimates as a result of lower inflation assumptions are described below.

The social security legislation also included a more costly extension of Federal supplemental unemployment compensation benefits than proposed in the budget. This change increases 1983 outlay estimates by $1.0 billion. The legislation also increases supplemental security income (SSI) outlays by $0.3 billion above the budget in 1984, along with smaller changes affecting medicare and medicaid.

Other smaller policy changes increase outlay estimates by $0.2 billion in 1984.

Revised economic assumptions.--The major outlay changes caused by the revised economic assumptions are for social security and other programs indexed to inflation; unemployment compensation; and oil and natural gas receipts from leases on the Outer Continental Shelf (OCS). Revised economic assumptions decrease 1984 outlay estimates $5.1 billion for 1984, and by smaller amounts for other years.

Lower inflation than assumed in January reduces social security cost-of-living increases by $1.4 billion in 1984 and by larger amounts in later years. The January budget assumed an increase of 5.1% in January 1984, as compared to the current projection of 3.5%.

Outlays for medicare are lower by $0.3 billion in 1984 because of lower inflation, and outlays for food stamps are lower by $0.6 billion because of lower inflation and lower unemployment.

The $5.4 billion decrease in the estimated outlays for unemployment compensation in 1983 is due to the decrease in the unemployment rate for 1983 from 10.7% assumed in January to 10.2% assumed now. Unemployment rates for 1984 through 1988 are now assumed to be lower than in January, which reduces outlays in those years also.

Lower prices for oil and natural gas reduce expected offsetting receipts from leases on the Outer Continental Shelf, which increases outlays by an estimated $1.9 billion in 1984 and by larger amounts in later years.

Technical reestimates.--Several major technical factors have also altered the January budget estimates. The largest change is for the Commodity Credit Corporation (CCC) commodity price support and related programs. The current estimate of CCC outlays in 1983 is $3.0 billion higher than the January estimate. Most of this increase is due to an increase in CCC loan programs, especially in the farmer-owned grain reserve program, and a reduction in dairy assessment receipts. The current estimated CCC outlays in 1984 are estimated to be lower than in January by $2.5 billion due to a larger sign-up for the President's payment-in-kind (PIK) price stabilization program than expected.

Other technical reestimates increase outlays by $1.8 billion in 1983 and $1.0 billion in 1984. In 1983 the increase is primarily due to changes for the Federal Savings and Loan Insurance Corporation and the Federal Deposit Insurance Corporation. Several smaller changes affect the estimates for 1984 and later years.

Net interest.--Estimates for net interest for 1984 have declined since January because of technical reestimates and revised estimates of Treasury borrowing requirements. Interest rate assumptions have not changed since January. Net interest is estimated to be $0.9 billion less in 1984 than estimated in January.

BUDGET AUTHORITY

The current estimate of budget authority in 1984 is $906.4 billion, $6.2 billion more than the January estimate.

Table 5 shows the changes for 1983 through 1988. They are primarily for the same programs and for the same reasons as described in the outlay section. The major exceptions are for social security, medicare, subsidized housing, and the International Monetary Fund.

Budget authority for social security and medicare is based on receipts and interfund borrowing between these trust funds. These receipts change because of changes in the 1983 Social Security Amendments and because of revised economic assumptions. In addition, there has been a technical correction of interest on trust fund balances in social security that reduces budget authority in 1985 through 1988.

Budget authority for subsidized housing programs for 1984 is increased by $3.1 billion from January to reflect the denial of the Administration's proposed deferral of $3.1 billion from 1983 to 1984. Since the Congress instead chose to use these funds in 1983, new budget authority is required in 1984 to carry out the President's proposed subsidized housing program.

Another exception is for the International Monetary Fund quota increase. An increase of $8.5 billion in budget authority is needed in 1983 to increase U.S. participation in the IMF and the general arrangements to borrow. The ensuing monetary transaction with the Fund will result in no budget outlays.

Table 5.--CHANGE IN BUDGET-AUTHORITY
(in billions of dollars)

	Estimates					
	1983	1984	1985	1986	1987	1988
January budget total....	847.4	900.1	997.4	1079.6	1162.7	1251.7
Changes due to:						
Policy:						
P.L. 98-8:						
Jobs funding (Title I).....	4.6	---	---	---	---	---
Title II.....	0.1	*	*	*	*	---
Title III.....	0.2	---	---	---	---	---
Offsets to jobs funding.....	*	-0.6	-0.7	-0.5	-0.5	-0.4
H.R. 1900 1/.....						
Social security.	0.6	2.2	-0.2	-0.3	-0.3	-0.2
Unemployment compensation...	0.9	0.2	---	---	---	---
Medicare.....	3.3	1.8	1.8	7.0	2.8	0.3
Other.....	-*	0.4	0.5	0.6	0.7	0.7
Subsidized housing	---	3.1	---	---	---	---
IMF quota increase	8.5	---	---	---	---	---
Other.....	0.1	-*	0.1	0.3	0.4	0.5
Subtotal, policy..	18.2	7.0	1.6	7.1	3.0	0.9
Revised economic assumptions:						
Unemployment compensation.....	-2.2	-4.2	-3.9	-4.2	-3.6	-0.7
Social security.....	-*	2.1	3.4	1.4	-0.4	-1.0
Medicare.....	0.2	0.8	1.9	1.9	1.8	2.0
OCS receipts.....	1.3	1.9	2.7	3.0	3.7	3.9
Other.....	0.2	-0.9	-1.3	-1.5	-1.8	-1.9
Subtotal, economic	-0.6	-0.3	2.7	0.6	-0.3	2.4
Technical reestimates:						
Social security.....	---	*	-4.1	-5.8	-7.7	-10.0
CCC.....	3.0	---	---	---	---	---
Other.....	0.7	0.4	0.2	-0.1	0.2	*
Net interest 2/.....	-0.9	-0.9	-0.2	1.1	2.3	1.6
Total, changes....	20.4	6.2	0.2	2.9	-2.5	-5.1
Current budget estimates	867.9	906.4	997.6	1082.5	1160.2	1246.6

* $50 million or less.
1/ 1983 Social Security Amendments.
2/ Includes effect of revised borrowing requirements and technical reestimates.

CREDIT BUDGET

The credit budget covers new direct loan obligations and guaranteed loan commitments. The budget authority and outlay effects of credit programs are included in the other sections of this document.

As shown in Table 6, the credit budget is expected to be higher by $3.8 billion in 1983 and lower by $0.6 billion in 1984 than estimated in January. Between 1985 and 1988, the estimates increase from $0.5 billion to $0.6 billion above the January levels with a smaller increase of $0.2 billion in 1986. The changes are due largely to the effect of the jobs bill, increases in international security assistance, and technical reestimates in the Commodity Credit Corporation.

New direct loan obligations.--An estimated increase of $0.3 billion in 1983 new direct loan obligations for the Small Business Administration (SBA) business loan and investment fund results from the jobs bill. Title I provides $52 million of direct loan authority and $100 million of guaranteed loan authority in the 503 program that is financed through the Federal Financing Bank (FFB) as direct loans. Title III provides $0.2 billion for the purchase of defaulted guaranteed loans that is partly offset by Congressional rejection of an Administration proposal to transfer budget authority from the Department of Commerce to SBA.

Direct loan obligations by the rural development insurance fund of the Farmers Home Administration increase by $0.4 billion in 1983 as a result of the jobs bill (Title I). The accelerated funding of $450 million for rural water and sewer facilities is proposed to be offset by corresponding reductions of $90 million annually over the 1984-1988 period.

A policy increase of $0.2 billion annually from 1984 to 1988 for direct loans made by the FFB for foreign military sales credit reflects additional funds for Greece to meet obligations likely to result when a new defense and economic cooperation agreement is negotiated.

Technical reestimates affect several programs. An estimated increase of $2.0 billion in 1983 Commodity Credit Corporation direct loan obligations results from an unanticipated increase in program participation, especially in the farmer-owned grain reserve direct loan program. Direct loan obligations for 1984 are estimated to be $1.0 billion lower than the January level because of an unexpected increase in participation in the President's payment-in-kind (PIK) program, which lowers the amount of commodities estimated to be placed under loan.

Table 6.--CHANGES IN THE CREDIT BUDGET
(in billions of dollars)

	1983	1984	1985	1986	1987	1988
January budget.....	151.8	137.6	138.4	140.5	140.5	141.5
New direct loan obligations:						
Policy changes:						
Jobs bill (Titles I and III):						
SBA.....	0.2	---	---	---	---	---
SBA (FFB).....	0.1	---	---	---	---	---
Rural development insurance fund 1/.....	0.4	-0.1	-0.1	-0.1	-0.1	-0.1
Other.....	*	---	---	---	---	---
Other policy changes:						
Foreign military sales credit (FFB)..	---	0.2	0.2	0.2	0.2	0.2
Technical reestimates:						
CCC.....	2.0	-1.0	---	---	---	---
Security assistance.....	0.3	0.3	0.3	0.4	0.4	0.5
New guaranteed loan commitments:						
Policy changes:						
Jobs bill (Title I):						
SBA.....	---	---	---	-0.4	---	---
Other policy changes:						
SBA.....	0.7	---	---	---	---	---
International Trade Administration	*	---	---	---	---	---
Total changes....	3.8	-0.6	0.5	0.2	0.6	0.6
Current totals.....	155.5	137.0	138.9	140.7	141.0	142.1

1/ Changes after 1983 are proposed offsets of $90 million per year to the jobs bill increase of $450 million.

Increases of $0.3 billion to $0.5 billion in 1983 to 1988 for the guarantee reserve fund for international security assistance programs result from a technical reestimate. Amounts recorded as repurchases of loan assets from the FFB have been reclassified as obligations for direct loans to the public.

New guaranteed loan commitments.--In 1986, guaranteed loan commitments in the SBA business loan and investment fund are estimated to be $350 million below the January level. The reduction is proposed in order to lower estimated future direct loan appropriations that would be used to pay claims on defaulted guaranteed loans. This decrease offsets the proposed increase in 1983 direct loan authority provided by the jobs bill.

Several increases in 1983 guaranteed loan commitments result from congressional disapproval of Administration deferrals. These deferrals reflected the withholding of budget authority associated with reserve funds established by law to protect against defaults on guaranteed loans. Congressional disapproval of the deferrals causes increases in guaranteed loan commitments for several programs:

-- $600 million in SBA's business loan and investment fund;

-- $100 million in SBA's pollution control equipment contract guarantee revolving fund; and

-- $28 million in the International Trade Administration of the Department of Commerce.

OFF-BUDGET FEDERAL ENTITIES

Since January, estimated outlays of off-budget Federal entities have decreased by $0.3 billion in 1983 and increased by $0.4 billion in 1984, with virtually no net changes in 1985 and 1986. The increases in estimated Federal Financing Bank outlays from 1984-1986 are mostly offset by decreases in estimated outlays for the strategic petroleum reserve.

Table 7.--CHANGE IN OUTLAYS OF OFF-BUDGET FEDERAL ENTITIES
(in billions of dollars)

	1983	1984	1985	1986	1987	1988
January estimate.....	17.0	14.0	10.5	9.4	9.6	9.2
Changes:						
Federal Financing Bank.....	-0.2	0.8	0.3	0.2	0.1	---
Strategic petroleum reserve.....	-0.1	-0.3	-0.2	-0.2	-0.3	-0.3
Current estimate.....	16.8	14.4	10.5	9.4	9.5	9.0

CURRENT SERVICES

Current services estimates for 1983-1988 have also been revised, as shown in the accompanying table. In order to maintain a baseline for comparison that reflects enacted law at the time the January budget was prepared, these estimates do not include the effects of the jobs bill and social security reform enacted since January. The changes shown here are only for revised economic assumptions and technical reestimates.

Table 8.--CURRENT SERVICES DEFICITS
(in billions of dollars)

	1983	1984	1985	1986	1987	1988
January estimate.	208.5	231.5	253.1	270.8	291.7	300.4
Changes:						
Receipts....	-0.8	3.3	-5.6	-6.2	-7.3	-14.0
Outlays.....	-1.5	-8.7	-5.9	-4.5	-5.6	-6.6
Subtotal, changes.	-2.3	-5.4	-11.5	-10.7	-12.9	-20.6
Current estimate.	206.2	226.1	241.6	260.1	278.9	279.8
Off-budget deficit:						
January estimate.....	16.9	17.1	14.2	13.6	16.4	15.1
Change.....	-0.4	0.1	-0.3	-0.3	-0.6	-0.5
Current estimate.	16.5	17.1	13.9	13.3	15.7	14.6
Current estimate including off-budget deficit..	222.8	243.2	255.5	273.4	294.6	294.4
Memorandum:						
Current Services Receipts.....	598.3	645.5	718.9	787.1	856.3	940.7
Current Services Outlays.....	804.6	871.6	960.5	1047.2	1135.2	1220.5

The major differences from the January estimates are due to revisions of the economic assumptions that underlie the current services projections.

Current services receipts are higher than in January primarily because of the stronger economic recovery that is now assumed for 1983 and 1984. This increase is partially offset by decreases in windfall profit tax receipts due to lower projected prices for oil and natural gas and by technical reestimates for 1984.

Current services outlays are lower than projected in January, primarily because of revised economic assumptions. Decreased outlays for cost-of-living adjustments and other reductions due to lower projected inflation are the major changes. Lower projected oil and natural gas prices decrease offsetting receipts for leases on the Outer Continental Shelf by

$1.3 billion to $3.9 billion in 1983-88, and lower inflation reduces other offsetting receipts, both of which increase outlays. Estimated off-budget outlays of the strategic petroleum reserve are reduced by $0.1 to $0.6 billion in 1983-88 as a result of the lower oil prices. The lower inflation assumptions also reduce current services outlays for allowances for civilian agency pay raises by $0.1 billion to $0.3 billion in 1984-88. Lower unemployment rate assumptions reduce estimated outlays by $5.4 billion in 1983 and by lesser amounts in subsequent years. Major technical reestimates include increased Commodity Credit Corporation outlays of $3.0 billion in 1983, increased FSLIC outlays of $0.3 to $0.5 billion in 1983-88, and decreased outlays for interest on the public debt of $0.3 billion to $1.2 billion in 1983-86 and increased outlays of $0.4 billion to $0.6 billion in 1987-88.

Table 9.--BUDGET RECEIPTS BY MAJOR SOURCE
(In billions of dollars)

	Actual	January Budget Estimate						Current Estimate					
	1982	1983	1984	1985	1986	1987	1988	1983	1984	1985	1986	1987	1988
Individual income taxes	297.7	285.2	295.6	317.9	358.6	395.7	446.1	280.2	294.2	331.0	373.7	409.0	459.8
Corporation income taxes	49.2	35.3	51.8	60.5	74.0	84.0	86.7	33.4	54.2	63.9	78.8	95.5	105.4
Social insurance taxes and contributions	201.5	210.3	242.9	275.5	304.9	330.3	370.2	211.8	240.0	270.9	298.9	322.0	361.0
Excise taxes	16.3	37.3	40.4	40.8	74.8	76.3	76.6	35.3	35.9	36.5	62.4	64.4	65.7
Estate and gift taxes	8.0	6.1	5.9	5.6	5.0	4.6	4.3	6.1	5.9	5.6	5.1	4.6	4.3
Customs duties	6.9	8.8	9.1	9.4	9.7	10.0	10.5	8.4	9.1	9.5	9.8	10.1	10.6
Miscellaneous receipts	16.2	14.5	14.0	14.5	14.8	15.4	15.8	15.2	14.4	15.0	15.2	15.8	16.2
Total budget receipts	617.8	597.5	659.7	724.3	841.9	916.3	1,010.3	590.3	653.7	732.4	843.8	921.3	1,022.9

Table 10.--BUDGET AUTHORITY BY FUNCTION
(In billions of dollars)

	Actual	January Budget Estimate						Current Estimate					
	1982	1983	1984	1985	1986	1987	1988	1983	1984	1985	1986	1987	1988
National defense	210.7	245.5	280.5	330.0	364.6	397.0	432.7	245.7	280.5	329.8	364.8	397.0	432.7
International affairs	15.2	17.1	16.8	16.3	15.8	15.6	16.1	25.8	16.7	16.4	15.7	15.5	16.0
General science, space and technology	7.1	7.9	8.5	8.4	7.7	7.7	6.8	7.9	8.5	8.4	7.7	7.7	6.8
Energy	3.3	3.7	2.9	3.1	3.1	3.2	3.7	4.0	2.9	3.2	3.2	3.2	3.7
Natural resources and environment	11.2	11.2	8.9	8.9	8.7	8.2	8.0	12.3	9.0	9.2	8.9	8.5	8.4
Agriculture	10.8	10.2	13.5	9.8	8.3	9.0	9.1	21.2	13.5	9.8	8.3	9.1	9.1
Commerce and housing credit	6.4	4.9	7.6	5.6	4.5	4.5	4.3	5.1	7.6	5.6	4.5	4.5	4.3
Transportation	21.3	26.7	27.8	28.5	29.4	29.3	29.7	26.9	27.8	28.5	29.3	29.2	29.7
Community and regional development	6.6	6.6	6.1	6.8	6.8	6.8	6.8	8.6	6.0	6.5	6.5	6.5	6.5
Education, training, employment, and social services	25.9	26.0	25.6	24.8	25.0	25.0	25.1	26.7	25.5	24.8	24.9	25.0	25.1
Health	78.9	67.6	91.7	100.6	112.3	122.8	133.3	71.3	94.3	104.2	121.1	127.2	135.3
Income security	256.2	301.3	284.2	315.6	344.6	375.3	411.5	300.9	287.2	310.2	335.1	362.8	399.2
(Social security)	(146.2)	(182.4)	(173.4)	(199.7)	(220.8)	(243.2)	(280.5)	(183.0)	(177.7)	(198.8)	(216.1)	(234.8)	(269.4)
(Other)	(108.0)	(118.9)	(110.7)	(115.9)	(123.8)	(132.1)	(130.9)	(117.8)	(109.5)	(111.4)	(119.0)	(128.0)	(129.8)
Veterans benefits and services	25.0	25.0	26.1	26.9	27.8	28.6	29.5	25.1	26.0	26.6	27.6	28.5	29.4
Administration of justice	4.7	5.2	5.6	5.5	5.4	5.5	5.7	5.3	5.5	5.6	5.5	5.6	5.7
General government	5.0	5.7	6.1	6.2	6.3	6.4	6.5	5.9	6.0	6.1	6.3	6.3	6.5
General purpose fiscal assistance	6.4	6.3	7.0	6.8	7.1	7.3	7.5	6.3	6.8	6.7	6.9	7.1	7.3
Net interest	84.7	88.9	103.2	114.2	122.7	130.4	134.3	88.0	102.3	114.0	123.7	132.7	135.6
Allowances	---	---	0.9	3.8	5.0	7.8	9.9	---	0.9	3.6	5.6	7.6	9.7
Undistributed offsetting receipts	-11.3	-20.4	-22.8	-24.6	-26.4	-27.7	-28.8	-19.1	-20.8	-21.8	-23.2	-23.8	-24.8
Total budget authority	779.9	847.4	900.1	997.4	1,079.6	1,162.7	1,251.7	867.9	906.4	997.6	1,082.5	1,160.2	1,246.6
ADDENDUM:													
Off-budget budget authority	34.0	29.7	27.1	23.5	20.2	20.4	24.7	29.5	27.9	23.1	20.1	20.2	24.7

Table 11.--OUTLAYS BY FUNCTION
(In billions of dollars)

	Actual	January Budget Estimate						Current Estimate					
	1982	1983	1984	1985	1986	1987	1988	1983	1984	1985	1986	1987	1988
National defense	187.4	214.0	245.3	285.3	323.0	354.3	385.6	214.0	245.4	285.3	323.0	364.3	385.6
International affairs	10.0	11.9	13.2	13.0	12.9	12.6	12.6	11.9	13.4	13.5	13.1	12.7	13.6
General science, space and technology	7.1	7.0	8.2	8.4	7.9	7.7	7.1	7.0	8.2	8.4	7.9	7.7	7.1
Energy	4.7	4.5	3.3	2.7	2.8	2.8	3.2	4.5	3.6	2.8	2.9	2.8	3.2
Natural resources and environment	12.9	12.1	9.8	9.3	8.7	8.3	8.0	12.7	10.3	9.6	9.0	8.6	8.5
Agriculture	14.9	21.1	13.1	10.7	9.5	9.8	10.0	24.2	9.7	10.7	9.5	9.9	10.0
Commerce and housing credit	3.9	1.9	0.4	-2.3	-2.8	-3.3	-3.8	3.3	0.9	-2.8	-3.4	-1.9	-2.5
Transportation	20.6	21.8	25.1	26.2	27.0	27.8	28.2	21.9	25.9	26.6	27.0	27.6	28.1
Community and regional development	7.2	7.4	7.0	7.0	6.8	6.7	6.7	7.7	7.7	7.3	6.7	6.5	6.4
Education, training, employment, and social services	26.3	26.7	35.3	25.1	24.8	24.8	25.1	27.4	25.3	25.8	24.8	24.8	25.1
Health	74.0	82.4	90.6	100.5	109.6	121.0	133.5	82.8	90.6	100.6	109.4	120.2	132.5
Income security	248.3	282.5	282.4	294.6	311.4	327.7	346.3	278.9	276.5	288.9	306.8	321.7	340.1
(Social security)	(154.1)	(166.3)	(178.2)	(191.8)	(205.8)	(221.8)	(236.8)	(168.5)	(176.9)	(189.8)	(203.1)	(217.5)	(233.6)
(Other)	(94.2)	(116.2)	(104.2)	(102.8)	(105.5)	(106.7)	(109.5)	(110.3)	(99.6)	(99.8)	(102.8)	(104.3)	(107.5)
Veterans benefits and services	24.0	24.4	25.7	26.5	27.2	27.9	28.9	24.5	25.4	26.2	26.9	27.7	28.7
Administration of justice	4.7	5.3	5.5	5.5	5.5	5.5	5.6	5.3	5.5	5.5	5.5	5.6	5.7
General government	4.7	5.8	6.0	6.0	6.1	6.1	6.4	5.8	6.0	6.0	6.1	6.1	6.3
General purpose fiscal assistance	6.4	6.4	7.0	6.8	7.1	7.3	7.5	6.4	6.8	6.7	6.9	7.1	7.3
Net interest	84.7	88.9	103.2	114.2	122.7	130.4	134.3	88.0	102.3	114.0	123.7	132.7	135.0
Allowances	---	---	---	0.9	3.7	5.7	7.7	9.8	---	0.9	3.6	5.5	7.5	9.6
Undistributed offsetting receipts	-13.1	-20.4	-22.8	-24.6	-26.4	-27.7	-28.8	-19.1	-20.8	-21.8	-23.2	-23.8	-24.8
Total budget outlays	728.4	805.2	868.5	918.5	980.6	1,050.4	1,126.9	868.5	843.9	917.0	980.4	1,057.9	1,125.3
ADDENDUM:													
Off-budget outlays	17.3	17.0	14.0	10.5	9.4	9.6	9.2	16.8	14.4	10.5	9.4	9.5	9.0

Table 17. BUDGET AUTHORITY BY AGENCY
(In billions of dollars)

	Actual 1982	January Budget Estimate 1983	1984	1985	1986	1987	1988	Current Estimate 1983	1984	1985	1986	1987	1988
Legislative Branch	1.4	1.5	1.6	1.6	1.7	1.7	1.7	1.6	1.6	1.6	1.7	1.7	1.7
The Judiciary	0.7	0.8	0.9	0.9	0.9	1.0	1.0	0.8	0.9	1.0	1.0	1.0	1.1
Executive Office of the President	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Funds Appropriated to the President	8.5	10.4	9.8	9.3	8.9	8.7	8.8	10.9	9.8	9.3	8.9	8.7	8.8
Department of Agriculture	40.6	41.6	39.2	33.7	31.3	32.2	32.4	45.5	38.6	32.9	30.6	31.4	31.7
Department of Commerce	1.8	1.6	1.4	1.4	1.4	1.5	1.6	1.9	1.4	1.4	1.4	1.5	1.6
Department of Defense - Military	213.8	239.4	273.4	321.6	356.4	388.3	424.3	239.6	273.4	321.4	356.4	388.3	424.3
Department of Defense - Civil	3.0	3.0	3.1	3.3	3.3	3.4	3.6	3.4	3.1	3.3	3.2	3.4	3.6
Education Activities	14.7	13.8	13.1	13.1	13.1	13.1	13.1	14.0	13.1	13.1	13.1	13.1	13.1
Energy Activities	7.9	8.4	8.9	10.7	10.6	11.0	11.0	8.7	9.0	10.8	10.7	11.0	11.0
Department of Health and Human Services	246.2	273.0	285.2	320.8	353.7	386.9	435.8	277.5	286.0	317.1	352.7	377.8	421.3
Department of Housing and Urban Development	20.1	10.7	4.1	4.6	8.7	14.8	9.8	11.7	7.2	4.3	8.5	14.5	9.6
Department of Interior	3.7	3.8	3.6	2.9	2.5	3.3	3.4	4.3	3.4	3.1	2.8	3.6	3.6
Department of Justice	2.6	2.9	3.4	3.4	3.2	3.3	3.3	3.0	3.3	3.4	3.2	3.3	3.3
Department of Labor	27.2	30.1	36.3	34.9	35.3	35.5	35.7	37.2	32.5	31.6	31.9	32.7	35.6
Department of State	2.6	2.7	2.9	3.0	3.1	3.2	3.3	2.7	2.9	3.0	3.1	3.2	3.3
Department of Transportation	20.5	25.9	27.0	27.7	28.6	28.5	28.9	26.2	27.0	27.7	28.6	28.4	29.0
Department of the Treasury	111.3	116.2	135.1	152.4	167.5	179.3	189.5	117.2	142.1	156.3	169.1	180.3	188.4
Environmental Protection Agency	3.7	3.7	3.6	3.7	3.7	3.4	3.4	3.7	3.6	3.7	3.7	3.4	3.4
National Aeronautics and Space Administration	6.0	6.8	7.1	7.0	6.3	6.3	5.4	6.8	7.1	7.0	6.3	6.3	5.4
Veterans Administration	24.9	25.0	26.1	26.8	27.7	28.6	29.5	25.0	25.9	26.6	27.5	28.4	29.4
Office of Personnel Management	32.6	36.0	38.3	43.5	45.3	47.4	49.4	36.0	38.3	43.5	45.3	47.4	49.4
Other Independent Agencies	15.2	16.6	15.6	15.9	15.9	15.9	16.5	17.4	15.6	15.8	15.6	15.6	16.3
Allowances	---	---	0.9	3.0	5.0	7.8	9.9	---	0.9	3.6	5.6	7.6	9.7
Undistributed													
offsetting receipts	-29.3	-36.8	-39.6	-47.7	-54.5	-61.4	-68.7	-35.4	-39.6	-43.8	-47.5	-51.5	-56.2
Total budget authority	779.9	847.4	900.1	997.4	1,079.6	1,162.7	1,251.7	867.9	906.4	997.6	1,082.5	1,160.2	1,246.8

Table 13.--BUDGET OUTLAYS BY AGENCY
(In billions of dollars)

	Actual	January Budget Estimate						Current Estimate					
	1982	1983	1984	1985	1986	1987	1988	1983	1984	1985	1986	1987	1988
Legislative Branch	1.4	1.5	1.6	1.6	1.6	1.6	1.7	1.5	1.6	1.6	1.7	1.7	1.7
The Judiciary	0.7	0.8	0.9	0.9	0.9	0.9	0.9	0.8	0.9	1.0	1.0	1.0	1.1
Executive Office of the President	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1	0.1
Funds Appropriated to the President	6.1	7.3	7.9	8.1	8.0	8.0	7.9	7.4	7.9	8.1	8.0	8.0	7.9
Department of Agriculture	36.2	45.0	35.0	32.9	32.4	32.9	33.1	48.3	32.1	32.2	31.7	32.1	32.4
Department of Commerce	2.0	2.0	1.7	1.6	1.5	1.6	1.6	2.0	1.8	1.7	1.5	1.6	1.6
Department of Defense - Military	182.9	208.9	238.6	277.5	314.9	345.6	377.0	209.0	238.7	277.4	314.9	345.6	377.0
Department of Defense - Civil	3.0	2.9	2.2	2.2	2.3	2.4	2.6	3.2	2.2	2.3	2.2	2.4	2.6
Education Activities	14.1	14.4	13.5	13.4	13.0	12.9	13.0	14.8	13.4	13.3	13.0	12.9	13.0
Energy Activities	7.6	8.7	8.8	9.6	10.1	10.7	10.7	8.9	9.1	9.8	10.2	10.7	10.7
Department of Health and Human Services	251.3	274.4	288.8	312.6	336.2	363.0	392.3	275.2	281.4	303.7	328.2	353.6	381.7
Department of Housing and Urban Development	14.5	14.9	13.7	12.8	12.9	14.0	14.8	15.2	14.3	13.1	12.8	13.9	14.6
Department of Interior	3.9	4.0	3.6	2.9	2.4	3.3	3.4	4.3	3.9	3.1	2.7	3.5	3.7
Department of Justice	2.4	3.0	3.3	3.3	3.3	3.3	3.3	3.0	3.3	3.3	3.3	3.3	3.3
Department of Labor	30.7	43.0	34.3	30.5	28.9	28.0	27.3	39.0	30.3	28.8	27.6	26.6	25.8
Department of State	2.2	2.3	2.6	2.7	2.8	2.9	3.0	2.3	2.6	2.7	2.8	2.9	3.0
Department of Transportation	19.9	21.2	24.4	25.5	26.3	27.1	27.5	21.1	25.1	25.9	26.3	26.9	27.4
Department of the Treasury	110.5	110.0	135.0	152.2	167.2	179.0	189.4	117.0	142.0	156.0	160.8	180.1	188.3
Environmental Protection Agency	5.1	4.4	4.1	4.0	3.8	3.6	3.4	4.4	4.1	4.0	3.8	3.6	3.4
National Aeronautics and Space Administration	6.0	6.7	7.0	7.0	6.4	6.3	5.7	6.7	7.0	7.0	6.4	6.3	5.7
Veterans Administration	23.9	24.4	25.7	26.4	27.1	27.8	28.7	24.4	25.6	26.2	26.9	27.6	28.6
Office of Personnel Management	20.0	21.5	23.2	24.2	25.9	27.5	29.2	21.3	23.0	24.1	26.0	27.8	29.6
Other Independent Agencies	13.1	12.5	11.4	10.4	10.3	9.6	9.3	14.0	12.0	11.0	10.5	9.9	9.5
Allowances	---	---	0.9	3.7	5.7	7.7	9.8	---	0.9	3.6	5.5	7.5	9.6
Undistributed offsetting receipts	-29.3	-36.8	-39.6	-47.7	-54.5	-61.4	-68.7	-35.4	-39.6	-43.0	-47.5	-51.5	-56.9
Total budget outlays	728.4	805.2	848.5	918.5	989.6	1,058.4	1,126.9	808.5	843.9	917.0	988.4	1,057.9	1,125.3

TABLE 14. SUMMARY OF JOBS BILL SPENDING: Changes from January
(in millions of dollars)

Amount in Title I of Jobs Bill (P.L. 98-8): 1/	BA 1983	Outlays 1983	1984	1985	1986	1987	1988	1983-1988
Agriculture:								
Rural water and waste disposal grants	150.0	6.0	48.0	49.5	22.5	13.5	6.0	145.5
Rural development insurance fund (on budget add-on)	(430.0)	---	.5	4.0	6.4	6.8	6.8	24.5
Watershed and flood prevention operations	107.5	28.8	53.8	25.0	---	---	---	107.5
Special supplemental food programs (WIC)	100.0	91.8	8.2	---	---	---	---	100.0
All other	174.5	132.9	38.0	3.1	0.6	---	---	174.5
Subtotal, Agriculture	(532.0)	(259.5)	(148.5)	(81.6)	(29.5)	(20.3)	(12.8)	(552.0)
Commerce:								
Economic Development Administration	100.0	1.0	30.0	35.0	18.0	12.0	4.0	100.0
Subtotal, Commerce	(100.0)	(1.0)	(30.0)	(35.0)	(18.0)	(12.0)	(4.0)	(100.0)
Defense--Military:								
Family housing	179.6	46.8	73.2	37.0	15.4	4.8	---	177.2
Subtotal, Defense--Military	(179.6)	(46.8)	(73.2)	(37.0)	(15.4)	(4.8)	(---)	(177.2)

TABLE 14. SUMMARY OF JOBS BILL SPENDING: Changes from January
(in millions of dollars)
(continued)

Amount in Title I of Jobs Bill (P.L. 98-8): 1/	BA 1983	Outlays 1983	1984	1985	1986	1987	1988	1983-1988
Defense--Civil:								
Corps of Engineers:								
Construction	225.0	85.0	55.0	85.0	---	---	---	225.0
Operation and maintenance general	54.0	44.0	10.0	---	---	---	---	54.0
Flood control	110.0	100.0	---	10.0	---	---	---	110.0
Subtotal, Defense--Civil	(389.0)	(229.0)	(65.0)	(95.0)	(---)	(---)	(---)	(389.0)
Education:								
Student financial assistance	50.0	2.5	46.0	1.5	---	---	---	50.0
All other	155.0	6.5	29.2	54.2	52.5	12.6	---	155.0
Subtotal, Education	(205.0)	(9.0)	(75.2)	(55.7)	(52.5)	(12.6)	(---)	(205.0)
Energy:								
Energy conservation	150.0	30.0	100.0	20.0	---	---	---	150.0
Subtotal, Energy	(150.0)	(30.0)	(100.0)	(20.0)	(---)	(---)	(---)	(150.0)
Health and Human Services:								
Health Services block grant	175.0	82.0	93.0	---	---	---	---	175.0
Social services block grant	225.0	170.0	55.0	---	---	---	---	225.0
All other	110.5	40.5	45.9	20.0	3.2	(---)	(---)	109.6
Subtotal, Health and Human Services	(510.5)	(292.5)	(193.9)	(20.0)	(3.2)	(---)	(---)	(509.6)

TABLE 14. SUMMARY OF JOBS BILL SPENDING: Changes from January
(in millions of dollars)
(continued)

Amount in Title I of Jobs Bill (P.L. 98-8): 1/	BA 1983	Outlays 1983	1984	1985	1986	1987	1988	1983-1988
Housing and Urban Development:								
Subsidized housing programs	(3,081.0)	21.0 1/	49.0	40.0	56.0	61.0	66.0	293.0
Community development grants	1,000.0	250.0	500.0	250.0	---	---	---	1,000.0
Urban development action grants	(244.0)	12.2	36.6	12.2	---	---	-61.0	---
Subtotal, Housing and Urban Development	(1,000.0)	(283.2)	(585.6)	(302.2)	(56.0)	(61.0)	(5.0)	(1,293.0)
Interior:								
National Park Service, Grants	105.0	9.0	96.0	---	---	---	---	105.0
Bureau of Indian Affairs, Construction	64.4	22.8	41.7	---	---	---	---	64.4
All other	211.0	111.8	96.2	3.0	---	---	---	211.0
Subtotal, Interior	(380.4)	(143.6)	(233.9)	(3.0)	(---)	(---)	(---)	(380.4)
Justice:								
Support of U.S. prisoners	20.0	4.0	9.0	7.0	---	---	---	20.0
Federal Prison System	60.0	1.3	17.1	24.9	14.3	2.4	---	60.0
Subtotal, Justice	(80.0)	(5.3)	(26.1)	(31.9)	(14.3)	(2.4)	(---)	(80.0)

TABLE 14. SUMMARY OF JOBS BILL SPENDING: Changes from January
(in millions of dollars)
(continued)

Amount in Title I of Jobs Bill (P.L. 98-8): 1/	BA 1983	Outlays 1983	1984	1985	1986	1987	1988	1983-1988
Labor:								
Dislocated workers training.	85.0	21.3	63.7	---	---	---	---	85.0
Summer youth employment.....	100.0	90.0	10.0	---	---	---	---	100.0
All other.....	69.9	15.4	54.5	---	---	---	---	69.9
Subtotal, Labor.....	(254.9)	(126.7)	(128.2)	(---)	(---)	(---)	(---)	(254.9)
Transportation:								
Highway trust fund.....	(775.0)	15.0	451.0	174.0	44.0	26.0	24.0	734.0
Grants to the National Railroad Passenger Corporation (AMTRAK).....	80.0	80.0	---	---	---	---	---	80.0
Airport and airway trust fund.....	(150.0)	16.5	67.5	42.0	12.0	12.0	---	150.0
All other.....	165.7	7.7	67.5	94.6	85.8	74.4	53.2	383.2
Subtotal, Transportation..	(245.7)	(119.2)	(586.0)	(310.6)	(141.8)	(112.4)	(77.2)	(1,347.2)
Veterans:								
Medical care.....	75.0	45.0	30.0	---	---	---	---	75.0
Subtotal, Veterans.....	(75.0)	(45.0)	(30.0)	(---)	(---)	(---)	(---)	(75.0)

TABLE 14. SUMMARY OF JOBS BILL SPENDING: Changes from January
(in millions of dollars)
(continued)

Amount in Title I of Jobs Bill (P.L. 98-8): 1/	BA 1983	Outlays 1983	1984	1985	1986	1987	1988	1983-1988
Other Independent Agencies:								
Federal Emergency Management Agency.....	100.0	100.0	---	---	---	---	---	100.0
All other.....	396.6	213.7	130.9	-1.0	-3.0	-4.0	-5.0	331.6
Subtotal, Other Independent Agencies.....	(496.6)	(313.7)	(130.9)	(-1.0)	(-3.0)	(-4.0)	(-5.0)	(431.6)
TOTAL, Jobs Bill (Title I)..	4,598.7	2/ 1,904.5	2,406.5	991.0	327.7	221.5	94.0	5,944.9

Addendum:
Proposed offsets from Table 15 (in millions of dollars).

	1983	1984	1985	1986	1987	1988	1984-88
Budget authority.....	---	-617.5	-664.8	-532.0	-521.0	-355.0	-2,690.3
(Obligational limitations)	---	---	(-315.0)	(-300.0)	(-310.0)	---	(-925.0)
(Loan limitations).....	---	---	---	(-350.1)	(-0.6)	(-1.4)	(-352.1)
Outlays.....	---	-379.3	-575.1	-646.9	-746.5	-623.8	-2,971.6

1/ Includes outlay effect of the overturn of the subsidized housing deferral. As a result of the overturn of this deferral, 1984 budget authority is proposed to be increased.
2/ Excludes increases amounting to $925 million in obligational limitations.

TABLE 15. PROPOSED OFFSETS TO SPENDING FOR THE JOBS BILL (TITLE I)
(in millions of dollars)

		1984	1985	1986	1987	1988	1984-1988
Agriculture							
Farmers Home Administration:							
Rural water and waste disposal grants.....	BA	-30.0	-30.0	-30.0	-30.0	-30.0	-150.0
	O	-1.0	-10.8	-20.7	-25.2	-27.9	-85.6
Rural development insurance fund (loan limitation).....	BA	---	---	(-.1)	(-.6)	(-1.4)	(-2.1)
	O	---	---	-1.0	-1.2	-1.8	-4.0
Soil Conservation Service:							
Watershed and flood prevention operations.	BA	-50.0	-17.0	-17.0	-16.0	---	-100.0
	O	-25.0	-33.5	-17.0	-16.5	-8.0	-100.0
Forest Service:							
National forest system.	BA	---	-15.0	-15.0	-15.0	-15.0	-60.0
	O	---	-13.4	-15.0	-15.0	-15.0	-58.4
Construction.....	BA	-3.2	-3.8	-6.0	-6.0	-6.0	-25.0
	O	-1.9	-3.6	-5.1	-6.0	-6.0	-22.6
Subtotal, Agriculture	BA	(-83.2)	(-65.8)	(-68.0)	(-67.0)	(-51.0)	(-335.0)
	O	(-27.9)	(-61.3)	(-58.8)	(-63.9)	(-58.7)	(-270.6)
Defense--Military Family Housing.....	BA	---	-199.3	---	---	---	-199.3
	O	---	-103.7	-56.6	-22.3	-9.7	-192.3
Subtotal, Defense--Military.....	BA	(---)	(-199.3)	(---)	(---)	(---)	(-199.3)
	O	(---)	(-103.7)	(-56.6)	(-22.3)	(-9.7)	(-192.3)

TABLE 15. PROPOSED OFFSETS TO SPENDING FOR THE JOBS BILL (TITLE I)
(in millions of dollars)
(continued)

		1984	1985	1986	1987	1988	1984-1988
Defense--Civil							
Corps of Engineers:							
Construction, general..	BA	-85.0	---	-32.0	-23.0	---	-140.0
	O	---	-85.0	-32.0	-23.0	---	-140.0
Flood control.....	BA	---	---	-30.0	-30.0	---	-60.0
	O	---	---	-30.0	-30.0	---	-60.0
Subtotal, Defense--Civil.....	BA	(-85.0)	(---)	(-62.0)	(-53.0)	(---)	(-200.0)
	O	(---)	(-85.0)	(-62.0)	(-53.0)	(---)	(-200.0)
Education							
Impact aid, (construction)	BA	-10.0	-10.0	-10.0	-10.0	-10.0	-50.0
	O	-1.0	-3.7	-8.6	-10.0	-10.0	-33.3
Handicapped Rehabilitation Projects.....	BA	-5.0	---	---	---	---	-5.0
	O	-0.8	-3.4	-0.8	---	---	-5.0
Student financial assistance (self-help grants).	BA	-50.0	---	---	---	---	-50.0
	O	-2.5	-46.0	-1.5	---	---	-50.0
Subtotal, Education..	BA	(-65.0)	(-10.0)	(-10.0)	(-10.0)	(-10.0)	(-105.0)
	O	(-4.3)	(-53.1)	(-10.9)	(-10.0)	(-10.0)	(-88.3)
Health and Human Services							
Food and Drug Administration.....	BA	-.9	---	---	---	---	-.9
	O	-.1	-.8	---	---	---	-.9
Health Block Grant.....	BA	-100.0	---	---	---	---	-100.0
	O	-70.0	-30.0	---	---	---	-100.0
Centers for Disease Control.....	BA	-15.6	---	---	---	---	-15.6
	O	-8.4	-4.0	-3.2	---	---	-15.6

TABLE 15. PROPOSED OFFSETS TO SPENDING FOR THE JOBS BILL (TITLE I)
(in millions of dollars)
(continued)

		1984	1985	1986	1987	1988	1984-1988
Social Service Block Grant	BA	-60.0	---	---	---	---	-60.0
	O	-58.0	-2.0	---	---	---	-60.0
Subtotal, HHS	BA	(-176.5)	(---)	(---)	(---)	(---)	(-176.5)
	O	(-136.5)	(-36.8)	(-3.2)	(---)	(---)	(-176.5)
Housing and Urban Development							
Community development grants	BA	---	-250.0	-250.0	-250.0	-250.0	-1,000.0
	O	---	-5.0	-100.0	-232.5	-250.0	-587.5
Subtotal, HUD	BA	(---)	(-250.0)	(-250.0)	(-250.0)	(-250.0)	(-1,000.0)
	O	(---)	(-5.0)	(-100.0)	(-232.5)	(-250.0)	(-587.5)
Interior							
Bureau of Reclamation, Operation and maintenance	BA	-11.0	-5.0	-5.0	---	---	-21.0
	O	-10.0	-5.0	-6.0	---	---	-21.0
U.S. Fish and Wildlife Service	BA	---	---	---	-10.0	-10.0	-20.0
	O	---	---	---	-5.0	-10.0	-15.0
National Park Service Operations	BA	---	---	-25.0	---	---	-25.0
	O	---	---	-10.0	-15.0	---	-25.0
Bureau of Indian Affairs: Operation of Indian programs	BA	-5.0	-5.0	-5.0	-5.0	---	-20.0
	O	-5.0	-5.0	-5.0	-5.0	---	-20.0
Construction	BA	-14.6	-20.0	---	---	---	-34.6
	O	-1.0	-8.3	-16.3	-9.0	---	-34.6
Subtotal, Interior	BA	(-30.6)	(-30.0)	(-35.0)	(-15.0)	(-10.0)	(-120.6)
	O	(-16.0)	(-18.3)	(-37.3)	(-34.0)	(-10.0)	(-115.6)

TABLE 15. PROPOSED OFFSETS TO SPENDING FOR THE JOBS BILL (TITLE I)
(in millions of dollars)
(continued)

		1984	1985	1986	1987	1988	1984-1988
Justice							
Interagency Law Enforcement:							
Organized crime drug enforcement	BA	-16.0	---	---	---	---	-16.0
	O	-9.0	-7.0	---	---	---	-16.0
Federal Prison System	BA	-54.0	---	---	---	---	-54.0
	O	-13.5	-15.1	-19.0	-6.0	-.4	-54.0
Subtotal, Justice	BA	(-70.0)	(---)	(---)	(---)	(---)	(-70.0)
	O	(-22.5)	(-22.1)	(-19.0)	(-6.0)	(-.4)	(-70.0)
Labor							
Employment and Training Administration:							
Dislocated workers training	BA	-17.0	-17.0	-17.0	-17.0	-17.0	-85.0
	O	-12.8	-17.0	-17.0	-17.0	-17.0	-80.8
Job Corps training	BA	-32.4	---	---	---	---	-32.4
	O	-26.9	-5.5	---	---	---	-32.4
Subtotal, Labor	BA	(-49.4)	(-17.0)	(-17.0)	(-17.0)	(-17.0)	(-117.4)
	O	(-39.7)	(-22.5)	(-17.0)	(-17.0)	(-17.0)	(-113.2)
Transportation							
Federal-aid highways (obligation limitation)	BA	---	(-275.0)	(-250.0)	(-250.0)	---	(-775.0)
	O	---	-46.0	-186.0	-214.0	-182.0	-628.0
Grants to the National Railroad Passenger Corporation (AMTRAK)	BA	-20.0	-20.0	-20.0	-20.0	---	-80.0
	O	-20.0	-20.0	-20.0	-20.0	---	-80.0

TABLE 15. PROPOSED OFFSETS TO SPENDING FOR THE JOBS BILL (TITLE I)
(in millions of dollars)
(continued)

		1984	1985	1986	1987	1988	1984-1988
Grants-in-aid for Airports (obligational limitation).....	BA	---	(-40.0)	(-50.0)	(-60.0)	---	(-150.0)
	O	---	-7.7	-25.5	-41.5	-39.7	-114.4
Urban Mass Transportation Administration, Interstate transfer.....	BA	---	---	---	-47.0	---	-47.0
	O	---	---	---	-2.4	-9.4	-11.8
Urban Mass Transportation Administration grants..	BA	---	-29.7	-28.0	-28.0		-85.7
	O	---	-1.5	-7.3	-15.9	-19.9	-44.6
Subtotal, Transportation.....	BA	(-20.0)	(-49.7)	(-48.0)	(-95.0)	(---)	(-212.7)
	O	(-20.0)	(-75.2)	(-238.8)	(-293.8)	(-251.0)	(-878.8)
Treasury U.S. Customs Service.....	BA	-3.8	---	---	---	---	-3.8
	O	-3.8	---	---	---	---	-3.8
Subtotal, Treasury.	BA	(-3.8)	(---)	(---)	(---)	(---)	(-3.8)
	O	(-3.8)	(---)	(---)	(---)	(---)	(-3.8)
Veterans Administration Medical Care.....	BA	-20.0	-30.0	-25.0	---	---	-75.0
	O	-15.0	-35.0	-25.0	---	---	-75.0
Subtotal, Veterans Administration..	BA	(-20.0)	(-30.0)	(-25.0)	(----)	(---)	(-75.0)
	O	(-15.0)	(-35.0)	(-25.0)	(---)	(---)	(-75.0)

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TABLE 15. PROPOSED OFFSETS TO SPENDING FOR THE JOBS BILL (TITLE I)
(in millions of dollars)
(continued)

		1984	1985	1986	1987	1988	1984-1988
Other Independent Agencies							
General Services Administration:							
Federal buildings fund	BA	--- 1/	---	---	---	---	---
	O	-81.0	-44.0	---	---	---	-125.0
Small Business Administration							
Business Loan/Investment fund	BA	---	---	-4.0	-14.0	-17.0	-35.0
	O	---	---	-4.0	-14.0	-17.0	-35.0
Loan limitation (guarantees)	BA	---	---	(-350.0)	---	---	(-350.0)
	O	---	---	---	---	---	---
Tennessee Valley Authority	BA	-14.0	-13.0	-13.0	---	---	-40.0
	O	-12.6	-13.1	-14.3	---	---	-40.0
Subtotal, Other Independent Agencies	BA	(-14.0)	(-13.0)	(-17.0)	(-14.0)	(-17.0)	(-75.0)
	O	(-93.6)	(-57.1)	(-18.3)	(-14.0)	(-17.0)	(-200.0)
TOTALS	BA	-617.5	-664.8	-532.0	-521.0	-355.0	-2,690.3
	O	-379.3	-575.1	-646.9	-746.5	-623.8	-2,971.6

1/ Offset to be achieved by reducing new obligational authority for FY 1984.

Table 16.--BUDGET FINANCING AND DEBT OUTSTANDING, 1982-1984
(in billions of dollars)

	1982 Actual	1983 Estimate		1984 Estimate	
		January	Current	January	Current
Budget Financing					
Budget surplus or deficit (-)	-110.6	-207.7	-210.2	-188.8	-190.2
Deficit (-), off-budget Federal entities	-17.3	-17.0	-16.8	-14.0	-14.4
Total deficit (-)	-127.9	-224.8	-227.0	-202.8	-204.7
Means of financing other than borrowing from the public:					
Decrease or increase (-) in cash and other monetary assets	-11.9	7.2	7.2	---	---
Increase or decrease (-) in liabilities for:					
Checks outstanding, etc	4.1	1.5	1.8	0.4	0.8
Deposit fund balances	0.3	0.6	0.5	-1.2	-0.7
Seigniorage on coins	0.4	0.5	0.5	0.6	0.6
Total, means of financing other than borrowing from the public	-7.1	9.8	10.0	-0.2	0.7
Total, requirements for borrowing from the public	-135.0	-215.0	-217.0	-203.0	-204.0
Change in debt held by the public	135.0	215.0	217.0	203.0	204.0
Debt Outstanding, End of Year					
Gross Federal debt:					
Debt issued by Treasury	1,142.0	1,379.1	1,387.4	1,601.8	1,618.1
Debt issued by other agencies	5.0	4.7	4.7	4.5	4.5
Total, gross Federal debt	1,147.0	1,383.7	1,392.0	1,606.3	1,622.6
Held by:					
Government agencies	217.6	239.3	245.6	258.9	272.1
The public	929.4	1,144.4	1,146.4	1,347.4	1,350.4
Debt Subject to Limit, End of Year					
Debt issued by Treasury	1,142.0	1,379.1	1,387.4	1,601.8	1,618.1
Treasury debt not subject to limit	-0.6	-0.6	-0.6	-0.6	-0.6
Agency debt subject to limit	1.5	1.4	1.4	1.3	1.3
Total debt subject to limit 1/	1,142.9	1,379.9	1,388.2	1,602.6	1,618.8

1/ The statutory debt limit is permanently established at $400 billion. Public Law 97-270 temporarily increased the statutory debt limit to $1,290.2 billion through September 30, 1983.

HIGHLIGHTS OF APRIL UPDATE

I. The April Budget and Deficit Estimates Reflect the Following Major Revisions

- o Stronger 1983 recovery with real GNP growth at 4.7% vs. 3.1%, and lower unemployment in 1983 and out-years.
- o Lower 1983 inflation with GNP deflator up 4.5% rather than 5.6%.
- o Lower oil prices with 1983-84 crude oil at $28/barrel rising with inflation thereafter.
- o Impact of enacted jobs bill and Social Security bill vs. January budget estimates.
- o Technical re-estimates of spending, revenues and January budget policy proposals.

II. Summary of Deficit Changes Due to April Update

Fiscal Year	January Budget	April	Change
1983.....	-207.7	-210.2	+2.5
1984.....	-188.8	-190.2	+1.4
1985.....	-194.2	-184.6	-9.6
1986.....	-147.7	-144.6	-3.1
1987.....	-142.1	-136.6	-5.5
1988.....	-116.6	-102.4	-14.2

III. Reasons for 1983-84 Deficit Increase

- The $18.4 billion two-year deficit improvement resulting from the GNP forecast revision is entirely off-set by the impact of lower oil prices, policy changes, and technical re-estimates. The deficit estimate for 1983-84 is now $4 billion higher than January.

Revision	1983	1984	1983-84 Total
1) Higher real GNP, lower unemployment and inflation.....	-7.7	-10.7	-18.4
2) Lower oil prices impact on WPT, off-shore receipts, etc.....	+2.7	+5.2	+7.9
3) Social Security and jobs bills.....	+3.0	+5.1	+8.1
4) Revision of other proposals (largely revenues).....	+0.6	+4.0	+4.6
5) Technical re-estimates, mostly CCC.....	+3.8	-2.4	+1.4
6) Debt service change...	+0.1	+0.3	+0.4
7) Total deficit change..	+2.5	+1.4	+3.9

IV. Summary of Deficit Change Factors, 1983-88

- The GNP revisions (line 1) reduce the January deficit estimate for 1983-88 by $98 billion or 10%.

- However, 1983-88 deficit increases attributable to lower oil prices, enacted policy changes and technical re-estimates amount to $69.5 billion -- thereby off-setting over 70% of the improvement attributable to the revised GNP forecast.

- The resulting net deficit reductions of $28.5 billion over 1983-88 represents a 3% improvement from the January estimates.

Source	1983-88 Deficit Impact (billions)
1) Higher 1983 real GNP, lower inflation and lower unemployment.....	-98.0
2) Lower oil prices impact on WPT and off-shore receipts, etc.....	+31.3
3) Policy changes, primarily Social Security bill and jobs bill.....	+28.4
4) Technical re-estimates.....	+13.2
5) Debt service effect of deficit change.....	-3.3
6) Total net deficit change, 1983-88.....	-28.5

CHANGES IN PROJECTED DEFICITS: JANUARY VS. APRIL
PRELIMINARY ESTIMATES

	1983	1984	1985	1986	1987	1988	1983-88
Deficit Outlook:							
1) January estimate.....	207.7	188.8	194.2	147.7	142.1	116.6	997.1
2) Revisions.....	+2.5	+1.4	-9.6	-3.1	-5.5	-14.2	-28.5
3) Current estimate.....	210.2	190.2	184.6	144.6	136.6	102.4	968.6
Breakdown of Deficit Changes:							
4) GNP Forecast Revisions:							
5) Higher revenues due to higher GNP 1/.....	-2.2	-3.4	-8.9	-10.5	-11.0	-16.6	-52.6
6) Lower outlays due to reduced inflation and unemployment...	-5.5	-7.3	-7.3	-7.5	-8.7	-9.1	-45.4
7) Subtotal, GNP forecast revisions.....	-7.7	-10.7	-16.2	-18.0	-19.7	-25.7	-98.0
8) Oil Price Revisions:							
9) Windfall profits tax and repricing of contingency excise tax 1/.....	+1.1	+3.0	+2.7	+2.2	+1.8	+1.3	+12.1
10) Off-shore oil and other oil receipts.....	+1.6	+2.2	+3.2	+3.6	+4.2	+4.4	+19.2
11) Subtotal, oil price revisions.....	+2.7	+5.2	+5.9	+5.8	+6.0	+5.7	+31.3

CHANGES IN PROJECTED DEFICITS: JANUARY VS. APRIL (Continued)
PRELIMINARY ESTIMATES

	1983	1984	1985	1986	1987	1988	1983-88
12) Policy changes:							
13) Social security bill:							
13a) Revenues 1/.....	---	+2.5	-2.2	+0.5	+0.2	-0.1	+0.9
13b) SSI outlays.....	+0.1	+0.3	+0.5	+0.5	+0.6	+0.6	+2.6
13c) Unemployment benefits....	+1.0	+0.2	---	---	---	---	+1.2
13d) Other outlays.....	---	+0.1	+0.3	+0.3	+0.3	+0.3	+1.3
13e) Total social security bill.....	+1.1	+3.1	-1.4	+1.3	+1.1	+0.8	+6.0
14) Jobs bill (Title I):							
14a) Gross effect.....	+1.9	+2.4	+1.0	+0.3	+0.2	+0.1	+5.9
14b) Proposed offsets.....	---	-0.4	-0.6	-0.6	-0.7	-0.6	-2.9
14c) Net effect.....	+1.9	+2.0	+0.4	-0.3	-0.5	-0.5	+3.0
15) Other Revenue policy changes 1/:							
15a) Contingency tax.....	---	---	---	+4.2	+2.8	+2.3	+9.3
15b) End-of-year withholding of interest and dividends.....	+0.5	+3.0	+0.8	+1.1	+1.3	+1.4	+8.1
15c) Other.....	---	+0.7	-0.6	---	---	---	+0.1
15d) Subtotal, revenues...	+0.5	+3.7	+0.2	+5.3	+4.1	+3.7	+17.5
16) Other outlay changes.....	+0.1	+0.3	+0.2	+0.3	+0.5	+0.5	+1.9
17) Subtotal, policy changes.....	+3.6	+9.1	-0.6	+6.6	+5.2	+4.5	+28.4
18) Technical reestimates:							
19) CCC farm price supports.....	+3.0	-2.5	---	---	---	---	+0.5
20) Net interest.....	-1.0	-1.2	-0.1	+1.7	+3.4	+3.5	+6.3
21) Other outlays.....	+2.0	+1.0	+1.3	+0.9	+0.8	+0.6	+6.6
22) Receipts 1/.....	-0.2	+0.3	+0.2	+0.5	-0.1	-0.9	-0.2
23) Subtotal, technical...	+3.8	-2.4	+1.4	+3.1	+4.1	+3.2	+13.2

151/102:96
April 11, 1983

CHANGES IN PROJECTED DEFICITS: JANUARY VS. APRIL (Continued)
PRELIMINARY ESTIMATES

	1983	1984	1985	1986	1987	1988	1983-88
24) Debt service effect of reduced deficits	+0.1	+0.3	-0.1	-0.6	-1.1	-1.9	-3.3
25) TOTAL EFFECT	+2.5	+1.4	-9.6	-3.1	-5.5	-14.2	-28.5

1/ Revenue increases are recorded as "-" and revenue reductions as "+".

Economic Assumptions: April Update vs. FY 1984 Budget

4/11/83

	Calendar Year						4th/4th					
	1983	1984	1985	1986	1987	1988	1983	1984	1985	1986	1987	1988
Nominal GNP ($ billions)												
January Budget	3,262	3,566	3,890	4,232	4,599	4,995	3,374	3,685	4,016	4,365	4,744	5,151
April Update	3,285	3,592	3,918	4,262	4,633	5,032	3,399	3,711	4,045	4,396	4,778	5,188
Nominal GNP (% change)												
January Budget	6.7	9.3	9.1	8.8	8.7	8.6	8.8	9.2	9.0	8.7	8.7	8.6
April Update	7.4	9.4	9.1	8.8	8.7	8.6	9.3	9.2	9.0	8.7	8.7	8.6
Real GNP (% change)												
January Budget	1.4	3.9	4.0	4.0	4.0	4.0	3.1	4.0	4.0	4.0	4.0	4.0
April Update	2.9	4.3	4.0	4.0	4.0	4.0	4.7	4.0	4.0	4.0	4.0	4.0
GNP Deflator (% change)												
January Budget	5.2	5.2	4.9	4.6	4.5	4.4	5.6	5.0	4.8	4.5	4.5	4.4
April Update	4.4	4.8	4.9	4.6	4.5	4.4	4.5	5.0	4.8	4.5	4.5	4.4
CPI-W (% change)												
January Budget	4.9	4.6	4.6	4.6	4.5	4.4	5.0	4.4	4.7	4.5	4.5	4.4
April Update	2.9	4.1	4.6	4.6	4.5	4.4	2.5	4.4	4.8	4.5	4.5	4.4
Unemployment Rate (%)												
January Budget	10.7	9.9	8.9	8.1	7.3	6.5	10.4	9.5	8.5	7.8	7.0	6.2
April Update	10.0	9.1	8.4	7.7	7.0	6.2	9.7	8.8	8.2	7.4	6.7	5.9
91-Day T-bill Rate (%)												
January Budget	8.0	7.9	7.4	6.8	6.5	6.1	8.0	7.8	7.1	6.6	6.4	5.9
April Update	8.0	7.9	7.4	6.8	6.5	6.1	8.0	7.8	7.1	6.6	6.4	5.9
Oil Prices -- Domestic Refiners' Acquisition Cost ($)												
January Budget	31.00	31.96	33.73	35.64	37.61	39.68	31.00	32.55	34.45	36.36	38.38	40.47
April Update	28.06	27.53	29.17	31.06	32.96	34.51	27.13	27.98	29.89	31.77	33.60	35.07

98th Congress, 1st Session - - - - - - - - House Document No. 98–48

PROJECTS RECOMMENDED FOR DEAUTHORIZATION EIGHTH ANNUAL REPORT

COMMUNICATION

FROM

THE ASSISTANT SECRETARY OF THE ARMY (CIVIL WORKS)

TRANSMITTING

THE EIGHTH ANNUAL REPORT RECOMMENDING DEATHORIZATION OF VARIOUS WATER RESOURCES PROJECTS, PURSUANT TO SECTION 12 OF THE WATER RESOURCES DEVELOPMENT ACT OF 1974, AS AMENDED

APRIL 18, 1983.—Referred to the Committee on Public Works and Transportation and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
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LETTER OF TRANSMITTAL

DEPARTMENT OF THE ARMY
OFFICE OF THE ASSISTANT SECRETARY
WASHINGTON, DC 20310

31 MAR 1983

Honorable Thomas P. O'Neill, Jr.
Speaker of the House of Representatives
Washington, D. C. 20515

Dear Mr. Speaker:

I am transmitting a report of the Chief of Engineers dated March 9, 1983, entitled "Projects Recommended for Deauthorization--8th Annual Report," pursuant to Section 12, Public Law 93-251, as amended. I concur with the Chief of Engineers' recommendation that the four projects in this report should be deauthorized. The Office of Management and Budget advises that there is no objection to the submission of the Chief of Engineers' report to the Congress.

Sincerely,

William R. Gianelli
Assistant Secretary of the Army
(Civil Works)

Enclosure

SECTION 12, PUBLIC LAW 93-251, AS AMENDED
(88 Statute 16)
WATER RESOURCES DEVELOPMENT ACT OF 1974

Project review, List, submittal to Congress

Sec. 12, (a) As soon as practicable after the date of enactment of this section and at least once each year thereafter, the Secretary of the Army, acting through the Chief of Engineers, shall review and submit to Congress a list of those authorized projects for works of improvement of rivers and harbors and other waterways for navigation, beach erosion, flood control, and other purposes which have been authorized for a period of at least eight years without any Congressional appropriations within the last eight years and which he determines, after appropriate review, should no longer be authorized. Each project so listed shall be accompanied by the recommendation of the Chief of Engineers together with his reasons for such recommendation. Prior to the submission of such list to the Congress, the Secretary of the Army, acting through the Chief of Engineers, shall obtain the views of interested Federal departments, agencies, and instrumentalities, and of the Governor of each State wherein such project would be located, which views shall be furnished within sixty days after being requested by the Secretary and which shall accompany the list submitted to Congress. Prior to the submission of such list to Congress the Secretary of the Army, acting through the Chief of Engineers, shall notify each Senator in whose State, and each Member of the House of Representatives in whose district, a project (including any part thereof) on such list would be located.

(b) Such list shall be delivered to both Houses on the same day and to each House while it is in session. A project on such list shall not be authorized at the end of the first period of ninety calendar days of continuous session of Congress after the date such list is delivered to it unless between the date of delivery and the end of such ninety day period, either the Committee on Public Works of the House of Representatives or the Committee on Public Works of the Senate adopts a resolution stating that such project shall continue to be an authorized project. For the purposes of this section continuity of session is broken only by an adjournment of Congress sine die, and the days on which either House is not in session,

because of an adjournment of more than three days to a day certain are excluded in the computation of the ninety day period. The provisions of this section shall not apply to any project contained in a list of projects submitted to the Congress within ninety days preceding the date of adjournment sine die of any session of Congress.

(c) Nothing in this section shall be construed so as to preclude the Secretary from withdrawing any project or projects from such list at any time prior to the final day of the period provided for in subsection (b).

(d) This section shall not be applicable to any project which has been included in a resolution adopted pursuant to subsection (b).

(e) The Secretary of the Army, acting through the Chief of Engineers, shall, on request by resolution of the Committee on Public Works of the Senate or the Committee on Public Works of the House of Representatives, review authorized projects for inclusion in the list of projects provided for in subsection (a) of this section. If any project so reviewed is not included in any of the first three lists submitted to the Congress after the date of the resolution directing the review of the project, a report on the review together with the reasons for not recommending deauthorization, shall be submitted to the Committee on Public Works of the Senate and House of Representatives not later than the date of the third list scheduled to Congress after the date of such resolution.

Report, submittal to Congressional Committees.

DISCUSSION OF SECTION 12, PUBLIC LAW 93-251
CONTAINED IN THE
REPORTS OF THE COMMITTEES ON PUBLIC WORKS

"Many water resources development projects become, after they are authorized, inappropriate for one reason or another. Changing economic conditions may render them uneconomic. Population and industrial growth may make them inadequate to serve new needs. The local interests may decide they do not want a project. Yet, in all of these cases, unless the time consuming process of obtaining specific Congressional deauthorization through an Act of Congress is followed, the project remains authorized, is considered part of the backlog of authorized but unconstructed projects, and continues to discourage homeowners and landowners in the project area from maintaining, much less improving, their property.

"It should be clearly noted that this section is not intended to be used as a vehicle for the abandonment by the Federal Government of maintenance of completed projects.

"This section fulfills a very real need for a means to remove from the books projects which are not needed or justified, while at the same time providing ample congressional review and final decision-making authority."

Source:

Report of the Committee on Public Works, United States Senate, Water Resources Development and River Basin Monetary Authorization Acts of 1973, Report No. 93-615, December 11, 1973, p. 117.

Report of the Committee on Public Works, House of Representatives, Water Resources Development Act of 1973 and River Basin Monetary Authorization Act of 1973, Report No. 93-541, October 3, 1973, pp. 90-91.

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PROJECTS RECOMMENDED FOR DEAUTHORIZATION— 8TH ANNUAL REPORT

REPORT OF THE CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO ATTENTION OF:

DAEN-CWP-A

March 9, 1983

SUBJECT: Projects Recommended for Deauthorization -- 8th Annual Report

THE SECRETARY OF THE ARMY

I am submitting my 8th Annual Deauthorization Report of projects recommended for deauthorization, pursuant to Section 12, Public Law 93-251, as amended. In this report, I recommend the deauthorization of 4 projects which have been authorized for at least eight years and for which no funds have been appropriated in the last eight years.

Enclosure

Acting Chief
J. K. Bratton
Lieutenant General, U.S. Army
Chief of Engineers

US Army Corps
of Engineers
Office of the Chief
of Engineers

List of 4 Projects Recommended for Deauthorization under Section 12, Public Law 93-251, as Amended

Part 1

best copy available

EXPLANATORY NOTES
TO THE LIST OF PROJECTS PROPOSED FOR DEAUTHORIZATION

1. Project Reference Number. A number used by the Corps of Engineers for internal bookkeeping.

2. Project Name. The name given a project when it was authorized by Congress.

3. Reason for Recommending Deauthorization. List contains a brief statement related to the criteria for recommending deauthorization published in the Federal Register (33 CFR 213); Project Information Sheets accompanying the list provide greater detail on the reasons for recommending deauthorization.

4. Deauthorization Code. A code used by the Chief of Engineers to explain the nature of the recommended deauthorization action:

Code A: The project recommended for deauthorization was last authorized by Congress prior to 31 December 1968, as indicated on the Project Information Sheet. The project has received no funds for Advance Engineering and Design (AE&D) or construction in the past 8 years. No portion of the project has been constructed since authorization. The recommended action would deauthorize the entire project, leaving no portion in an authorized but unconstructed status.

Code B: The project recommended for deauthorization was last authorized by Congress prior to 31 December 1968, as indicated on the Project Information Sheet. Portions of that project have been completed. Neither the completed nor the uncompleted portions of the project have received funding for AE&D or construction in the past 8 years. The recommended action would deauthorize all uncompleted portions of the project, leaving none in an authorized but unconstructed status. The deauthorization action would not affect Federal maintenance responsibilities for completed portions of the project if provided in the Authorization Act, or otherwise authorized by Congress.

Code C: The project recommended for deauthorization was last authorized by Congress prior to 31 December 1968, as an element of a project. This element has been administratively identified as a separate project by the Corps of Engineers and may be suitable for deauthorization under Section 12, Public Law 93-251, or other subsequent, specific Congressional action as a modification to the original project authorization. No other element of the project authorization, of which this element was a part, has received funding in the last 8 years. The recommended action will leave other elements of the project authorization in an authorized but unconstructed status. The recommended action would not affect Federal maintenance responsibilities for completed portions of the project if provided in the Authorization Act, or otherwise authorized by Congress.

Code D: Same as Code C except that two or more elements of an authorized project, which have been identified by the Corps of Engineers as a separate project(s), are being recommended for deauthorization.

Project Reference Number	Project Name	Reason for Recommending Project Deauthorization	Deauthorization Code
I-74359-F	Biscayne, Bay	Absence of local support. Dade County withdrew as local sponsor.	A

Project Reference Number	Project Name	Reason for Recommending Project Deauthorization	Deauthorization Code
D-73927-F	Hammondsport, Oswego River Basin, NY	The project, as authorized, is not adequate to meet current or prospective needs.	A
I-73645-N	Ticonderoga River, NY	The project lacks economic justification.	A

TEXAS

Project Reference Number	Project Name	Reason for Recommending Project Deauthorization	Deauthorization Code
I-75014-F	Lake Fork Lake (Sabine River)	Project has been built by local interest.	A

US Army Corps of Engineers
Office of the Chief of Engineers

Comments on Chief of Engineers' Proposed List of Projects

List transmitted to Governors of affected States and Federal Agencies for review and comment on 2 November 1982

Part 2

COMMENTS OF THE DEPARTMENT OF AGRICULTURE

DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D. C. 20250

Lieutenant General Joseph K. Bratton
Chief of Engineers
Office of the Chief of Engineers
Army Corps of Engineers
U.S. Department of the Army
Washington, D.C. 20314

Dear General Bratton:

We have reviewed the list of authorized, but unconstructed, Corps of Engineers' projects which you proposed to recommend for deauthorization by Congress pursuant to Section 12 of the Water Resources Development Act of 1974, Public Law 93-251.

The U.S. Department of Agriculture has made a project-by-project review of the list you propose to recommend for deauthorizaton to the Congress and has no objection to your proposal.

Sincerely,

John R Block

John R. Block
Secretary

COMMENTS OF THE DEPARTMENT OF THE NAVY

DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
WASHINGTON, D C 20350

MEMORANDUM FOR LIEUTENANT GENERAL J. K. BRATTON, CHIEF OF ENGINEERS, DEPARTMENT OF THE ARMY (ATTN: DAEN-CWP-A), WASHINGTON, DC

Subj: Annual Review Unconstructed Projects for Deauthorization

The Navy has no objection to recommending deauthorization of the following U.S. Army Corps of Engineers unconstructed projects:

I-74359-F Biscayne Bay, Florida
D-73927-F Hammondsport, Oswego River Basin, New York
I-73645-N Ticonderoga River, New York
I-75014-F Lake Fork Lake (Sabine River), Texas

Chyons BCol

ASS

COMMENTS OF THE DEPARTMENT OF THE NAVY

UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
National Marine Fisheries Service
Washington, D.C. 20235

F/M42:RG

JAN 6 1983

Lieutenant General J.K. Bratton
Chief of Engineers
Department of the Army
ATTN: DAEN-CWP-A
Washington, D.C. 20314

Dear General Bratton:

We have reviewed the list of projects for deauthorization proposed in your letter of November 2, 1982, to Secretary Baldrige. The National Marine Fisheries Service is not opposed to the deauthorization of these projects and appreciates the opportunity to comment.

Sincerely yours,

Carmen J. Blondin
Acting Deputy Assistant Administrator
for Fisheries Resource Management

19-351 O - 83 - 4

COMMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

U.S. Department of Housing and Urban Development
New York Regional Office, Region II
26 Federal Plaza
New York, New York 10278

19 JAN 1983

Lieutenant General J. K. Bratton
Chief of Engineers
Department of the Army (Attn: DAEN-CWP-A)
Washington, D.C. 20314

Dear General Bratton:

We have reviewed your deauthorization proposal for the Hammondsport, Oswego River Basin, N. Y. and the Ticonderoga River, N.Y. projects and offer no objections or review comments. We find that there are no existing or proposed HUD projects in the immediate vicinity of either site.

Thank you for the opportunity to comment on your deauthorization proposal.

Sincerely,

Joseph D. Monticciolo

Joseph D. Monticciolo, FAIA
Regional Administrator

COMMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
ATLANTA REGIONAL OFFICE
RICHARD B. RUSSELL FEDERAL BUILDING
75 SPRING STREET, S.W.
ATLANTA, GEORGIA 30303

REGION IV

IN REPLY REFER TO:

November 18, 1982

Lieutenant General J. K. Bratton
Chief of Engineers
Department of the Army (ATTN:DAEN-CWP-S)
Washington, DC 20314

Dear General Bratton:

The Department of Housing and Urban Development has no objection to your proposal to deauthorize the project for hurricane protection on Biscayne Bay in Date County, Florida.

Thank you for advising us of the proposal.

Sincerely,

Henry H. Bankston

for Charles N. Straub
Regional Environmental Clearance Officer
Office of Regional Community
Planning and Development, 4C

COMMENTS OF THE DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FORT WORTH SERVICE OFFICE
221 WEST LANCASTER AVENUE
P.O. BOX 2905
FORT WORTH, TEXAS 76113

REGION VI

29 NOV 1982

Original: CW

IN REPLY REFER TO
DAEN-CWP-A

November 23, 1982

Lieutenant General J. K. Bratton
Chief of Engineers
Department of the Army
Washington, D.C. 20314

Dear General Bratton:

Receipt is acknowledged of Colonel James W. Ray's letter of November 2 soliciting my views on the proposed deauthorization of the inactive Lake Fork Lake (Sabine River) Multi-Purpose Reservoir Project in Hopkins, Rains and Wood Counties, Texas.

As its site has been preempted by a Non-Federal reservoir developed by the Sabine River Authority, construction of the subject proposed Corps of Engineers' project is wholly ruled out. Accordingly, I hereby concur in the proposed deauthorization action.

Sincerely,

Dick Eudaly
Regional Administrator

COMMENTS OF THE DEPARTMENT OF THE INTERIOR

United States Department of the Interior

OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20240

JAN 5 1983

Lieutenant General J. K. Bratton
Chief of Engineers
Attn: DAEN-CWP
Department of the Army
Washington, D.C. 20314

Dear General Bratton:

The Department of the Interior has reviewed your list of four projects proposed for deauthorization which was transmitted on November 2, 1982.

We have no objection to deauthorization of these projects.

Sincerely,

Bruce Blanchard, Director
Environmental Project Review

COMMENTS OF THE DEPARTMENT OF TRANSPORTATION

U.S. Department of Transportation
Office of the Secretary of Transportation

400 Seventh St., S.W.
Washington, D.C. 2059[illegible]

NOV 2[illegible]

Lt. General J. K. Bratton
Chief of Engineers
Department of the Army
(ATTN: DAEN-CWP-A)
Washington, D.C. 20314

Dear General Bratton:

Thank you for opportunity to review your proposed deauthorization of certain unconstructed Corps of Engineers' projects.

The Department of Transportation, including the Coast Guard and the Federal Highway Administration, have reviewed the proposal and we have no comments.

Sincerely,

Richard F. Walsh
Director, Office of Economics

COMMENTS OF THE DEPARTMENT OF THE ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION II
26 FEDERAL PLAZA
NEW YORK, NEW YORK 10278

NOV 24 1982

Lieutenant General J.K. Bratton
Chief of Engineers
Department of the Army
Washington, D.C. 20314

Dear General Bratton:

This is in response to Colonel James W. Ray's letter of 2 November 1982 to Ms. Jacqueline E. Schafer, our Regional Administrator, requesting our views and comments on the proposed deauthorization of two navigation projects, Hammondsport, Oswego River Basin, New York and Ticonderoga River, New York.

Our agency neither anticipates any adverse environmental impacts due to the deauthorization of this project nor do we have any objection to their deauthorization.

Thank you for the opportunity to comment.

Sincerely yours,

William J. Muszynski, Acting Director
Water Management Division

COMMENTS OF THE DEPARTMENT OF THE ENVIRONMENTAL PROTECTION AGENCY

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION IV
345 COURTLAND STREET
ATLANTA, GEORGIA 30365

NOV 24 1982

4PM-FAC

Lieutenant General J.K. Bratton
Chief of Engineers
Department of the Army
ATTN: DAEN-CWP-A
Washington, D.C. 20314

SUBJECT: Deauthorization of Hurricane Barrier Levee
Project Reference No. I-74359-F

Dear General Bratton:

Our review of the subject project indicates that it would have several adverse environmental effects on Biscayne Bay including the following:

(1) It would reduce tidal flushing and further degrade water quality in the upper bay area.

(2) The levee would act as a partial barrier to migrating shrimp and fish species and to recreational boaters and fishermen.

(3) The construction of the barrier would reduce the overall productivity of the bay with regard to fish and shrimp which spend part of their life cycle in the bay.

For these reasons we are in favor of the deauthorization of the project.

Sincerely yours,

Howard D. Zeller
Assistant Regional Administrator for
Policy and Management

GOVERNORS OF AFFECTED STATES

OR

THEIR DESIGNATED REPRESENTATIVES

COMMENTS FROM THE STATE OF FLORIDA

STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL REGULATION

TWIN TOWERS OFFICE BUILDING
2600 BLAIR STONE ROAD
TALLAHASSEE, FLORIDA 32301-8241

BOB GRAHAM
GOVERNOR

VICTORIA J. TSCHINKEL
SECRETARY

November 24, 1982

LTG Joseph K. Bratton
Chief of Engineers
Department of the Army
Washington, D.C. 20314

Attn: DAEN-CWP-A

Dear General Bratton:

This is in response to Colonel Ray's November 2, 1982 letter inquiring about our views on the proposed deauthorization of the Biscayne Bay Hurricane Protection Project. We understand that Dade County, as local sponsor, has asked that the project be deauthorized. We concur, but we are disappointed that this is the only project you are considering for deauthorization during the annual review required by Section 12 of P.L. 93-251. There are at least three other projects in Florida which should be deauthorized.

1. Cross Florida Barge Canal. The Governor, the Legislature, and the Canal Authority of Florida have all requested deauthorization.

2. Gulf Intracoastal Waterway from St. Marks to Tampa Bay, Florida. No work has been done on this unneeded 234-mile canal.

3. Suwannee River, Florida. A Governor's Committee on the Suwannee River recently recommended deauthorization of the 139-mile navigation project up the river. The Governor accepted this recommendation. We urge you to place this project on your deauthorization list.

We would appreciate an explanation of why these three projects are not being considered for deauthorization.

Sincerely,

Terry Cole for
Victoria J. Tschinkel
Secretary

VJT/ldj

DEPARTMENT OF THE ARMY
OFFICE OF THE CHIEF OF ENGINEERS
WASHINGTON, D.C. 20314

REPLY TO ATTENTION OF:
DAEN-CWP-A

December 28, 1982

Ms. Victoria J. Tschinkel
Department of Environmental Regulation
State of Florida
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301

Dear Ms. Tschinkel:

On November 2, 1982, my office transmitted to you a list of projects proposed for deauthorization pursuant to Section 12, Public Law 92-251. In your letter of November 24, 1982, you suggested that three other projects in Florida (Cross Florida Barge Canal, Gulf Intracoastal Waterway from St. Marks to Tampa Bay, and Suwannee River), be deauthorized.

The Suwannee River project was deauthorized on August 5, 1977. This information is provided in the First Annual Report-Projects Recommended for Deauthorization, House Document #94-192, 94th Congress 2nd Session.

The Cross Florida Barge Canal has been funded as recently as FY 1982. Therefore, it will not meet the eligibility requirements of Section 12 until FY 1989.

I understand that, on November 15, 1982, the Jacksonville District Engineer sent you a letter informing you that the Gulf Intracoastal Waterway was last funded in FY 1974 and will be put on the list of eligible projects recommended for deauthorization the next time the list is updated. Once on that list, it will be considered by the Jacksonville District Engineer, along with other eligible projects, as a potential candidate for a deauthorization review.

I believe the information provided is responsive to your concerns about additional deauthorization. If you desire further information please feel free to contact Mr. Barry Kennedy or Ms. Velma Payton at 202-272-0141.

J. K. Bratton
Lieutenant General, U. S. Army
Chief of Engineers

STATE OF FLORIDA

DEPARTMENT OF ENVIRONMENTAL REGULATION

TWIN TOWERS OFFICE BUILDING
2600 BLAIR STONE ROAD
TALLAHASSEE, FLORIDA 32301-8241

BOB GRAHAM
GOVERNOR

VICTORIA J. TSCHINKEL
SECRETARY

January 19, 1983

Lieutenant General J.K. Bratton
Chief of Engineers
Department of the Army
Washington, D.C. 20314

Attention: DAEN-CWP-A

Dear General Bratton:

Thank you for your December 28, 1982, letter to Secretary Tschinkel concerning deauthorization of Corps of Engineers' projects in Florida. However, some important questions remain.

First, you state that the Suwannee River navigation project was deauthorized on August 5, 1977. It was previously our understanding from correspondence with the Jacksonville District (enclosed) that only part of the project has been deauthorized. Please clarify for us whether part or all of the project has been deauthorized.

Second, you note that the Gulf Intracoastal Waterway from Carrabelle to Anclote Key "will be put on the list of eligible projects recommended for deauthorization the next time the list is updated". However, you also state that it will only be "considered" as a "potential candidate". We will be very pleased if this portion of the Intracoastal Waterway is scheduled for automatic deauthorization review. The present restudy of the Cross Florida Barge Canal should provide additional justification for deauthorizing this segment of the Intracoastal Waterway. Again, we are requesting clarification.

Third, you state that the Cross Florida Barge Canal will be eligible for deauthorization review in FY 1989, eight years after the FY 1982 appropriation for an economic restudy. This obviously implies that the Canal, although partly constructed, is at least eligible for automatic deauthorization review. This also appears to conflict with an assumption in the correspondence we have received from the Jacksonville District.

We would appreciate a clarification of this conflict. It is our view that any project which has not received any appropriation for at least eight years is eligible for automatic deauthorization review.

Thank you for your cooperation.

Sincerely,

Al Bishop
Chief, Bureau of
Water Management

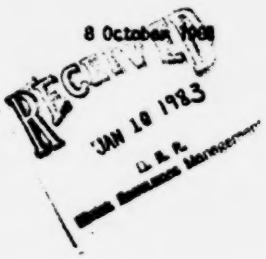
AB/lj

Enclosure

cc: Mr. Barry Kennedy

SAJPD-N

8 October 1981



Mr. Al Bishop
Chief, Bureau of Water Management
Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301

Dear Mr. Bishop:

This is in reply to your letter of 25 September 1981 to Colonel Devereaux concerning deauthorization of the Suwannee River navigation project. No authority exists outside Congress to make that kind of decision on a Federal project.

Your understanding that portions of the project have been deauthorized is correct. Work that had not been done included removal of minor rock shoals and widening of the channel in a number of places along the river, and those portions of the project that were never constructed have been deauthorized under the provisions of Section 12, Public Law 93-251.

The constructed portion of the Suwannee River navigation project is not subject to deauthorization under Section 12, mentioned above. A study would have to be made by the Corps of Engineers and a report prepared and submitted to Congress with the recommendation to deauthorize the constructed project.

As requested, a copy of the Sixth Annual Deauthorization Report is inclosed.

Sincerely,

1 Incl
As stated

A. J. SALEM
Acting Chief
Planning Division

DAEN-CWP-A

Mr. Al Bishop
Chief, Bureau of Water Management
Department of Environmental Regulation
Twin Towers Office Building
2600 Blair Stone Road
Tallahassee, Florida 32301

Dear Mr. Bishop:

I am writing in answer to your January 19, 1983 letter to Lieutenant General Bratton concerning possible deauthorization of three projects in Florida.

Only the unconstructed portion of the Suwannee River Navigation project was deauthorized. The constructed portion remains as a completed Federal project. Our "Section 12" program is not a means of deauthorizing completed projects. In discussing Section 12, the Committees on Public Works stated "It should be clearly noted that this section is not intended to be used as a vehicle for the abandonment by the Federal Government of maintenance of completed projects."

We note your interest in deauthorization of the Gulf Intracoastal Waterway from Carrabella to Anclote Key and will forward your letter to the Jacksonville District Commander, Colonel Devereaux. The District Commander is responsible for reviewing projects available for deauthorization in his district and must balance his priorities against the resources at his disposal; resources which are increasingly constrained. We have authorized district commanders to conduct such deauthorization reviews within the geographic scope of ongoing feasibility studies, subject to availability of sufficient manpower and funding for the feasibility study.

As a point of clarification, only the eligibility of projects is automatic, in accordance with the criteria in Section 12, Public Law 93-251 and specified in our regulation ER 1105-2-10, Chapter 3. But the deauthorization review is not automatic. To the contrary, it is conducted in a deliberate manner to determine

whether the Secretary of the Army should request Congress to reverse its earlier decision to authorize construction of a project.

While Section 12 could be used to deauthorize the Cross Florida Barge Canal, such action should await completion of the restudy. We believe that this project is so unusual, both in scope and in status of completion, that its deauthorization could better be accomplished through specific legislation, similar to that introduced in the 96th Congress.

Sincerely,

"S"

William T. Kirkpatrick
Colonel, Corps of Engineers
Assistant Director of Civil Works,
Atlantic

CF:
DAEN-CWM-A
DAEN-CWP
DAEN-CWP-A ret to:

CF: Dr. Johnson (for revision of ER 1105-2-10, Ch. 3)

COMMENTS FROM THE STATE OF NEW YORK

STATE OF NEW YORK
EXECUTIVE CHAMBER
ALBANY 12224

MICHAEL FINNERTY
ACTING SECRETARY
TO THE GOVERNOR

November 9, 1982

Dear Colonel Ray:

On behalf of Governor Carey, I acknowledge a copy of the list of projects which the Chief of Engineers intends to recommend for deauthorization transmitted with your letter of November 2.

Sincerely,

Colonel James W. Ray
Executive Director, Engineer Staff
District Corps of Engineers
Department of the Army
Washington, D. C. 20314

New York State Department of Environmental Conservation
50 Wolf Road, Albany, New York 12233

Robert F. Flacke
Commissioner

November 19, 1982

Lt. General J.K. Bratton
Chief of Engineers
Department of the Army
Washington, D.C. 20314

Attention: DAEN -CWP-A

Dear General Bratton:

Commissioner Flacke has asked this office to respond to the November 2, 1982 letter from Col. James W. Ray requesting our views on the deauthorization of projects at Hammondsport and Ticonderoga, New York. This agency concurs with the recommended deauthorization of the project at Hammondsport because the project would not meet local needs. This Department has no interest in the project at Ticonderoga since we have no records that any New York State agency was ever a project sponsor.

Sincerely,

James F. Kelley
Director, Flood Protection Bureau

RLK:dc

cc: Eric Seiffer, Director Region 8
Thomas Monroe, Director Region 5
Mary Kadlecek

US Army Corps
of Engineers
Office of the Chief
of Engineers

Project Information Sheets

Part 3

Division: South Atlantic
District: Jacksonville

I-74359-F

PROJECT INFORMATION SHEET

NAME OF PROJECT: BISCAYNE BAY, FLORIDA

AUTHORIZATION: Public Law 71, 84th Congress, 1st Session, June 15, 1955, in part:

Biscayne Bay, Florida

The project for hurricane protection on Biscayne Bay to alleviate tidal flooding in the low lying areas bordering the northern portion of the bay is hereby authorized substantially in accordance with the recommendations of the Chief of Engineers in House Document Numbered 213, Eighty-ninth Congress, at an estimated cost $3,485,000. The Chief of Engineers shall not undertake construction of the levee barrier across Biscayne Bay until a model study of a portion of the bay is completed to confirm technical design estimates for the proposed levee barrier and to evaluate the general effects of barrier location and design on normal conditions in the bay, such as tidal volume and circulation, and until sixty days after the date of submission of the model study report to the Committees on Public Works of the Senate and House of Representatives.

LOCATION. Biscayne Bay is a shallow tidal sound located in the extreme southeastern part of Florida. It extends southward about 38 miles in a general south-southwest direction from the general vicinity of Golden Beach. The bay varies in width from less than 1 to about 9 miles. The narrowest section of the bay is in the northern portion. Shallow natural passages between the keys and two artificial cuts permit the normal rise and fall of ocean tides to enter the bay. The northern part of the bay, from Rickenbacker Causeway to the Dade County line, has a length of about 11 miles and varies in width from 0.6 to 3 miles. This part of the bay separates the densely populated areas of Miami and Miami Beach and is broken by six earth-fill causeways with bridge openings for navigation and tidal flow. The southern part of the bay is unobstructed. It has a length of about 27 miles south of Rickenbacker Causeway and a width that varies from about 3 to 9 miles. Water depths in the bay vary, at mean low water, from less than 1 foot to depths approaching 15 feet.

DESCRIPTION. The authorized project consists of a hurricane barrier levee with ungated navigation openings north of Rickenbacker Causeway from near Point View to Fisherman's Channel near Fisher Island. A general plan of the project is attached showing the location of the levee.

SUMMARIZED FINANCIAL DATA.

Estimated Project Costs (1965 Price Levels) 1/

Federal	$2,439,500 2/
Non-Federal	1,045,500
Total	$3,485,000

NAME OF PROJECT: BISCAYNE BAY, FLORIDA

Funds Allotted to Date	0
Last Year Funds Allotted	0

1/ Project reclassified inactive - 3 April 1967.

2/ Other Federal costs under this authorization include a model study, estimated at $275,000.

REASONS FOR CLASSIFICATION OF INACTIVE. Absence of local support for the project followed by local interest declining to sponsor the project.

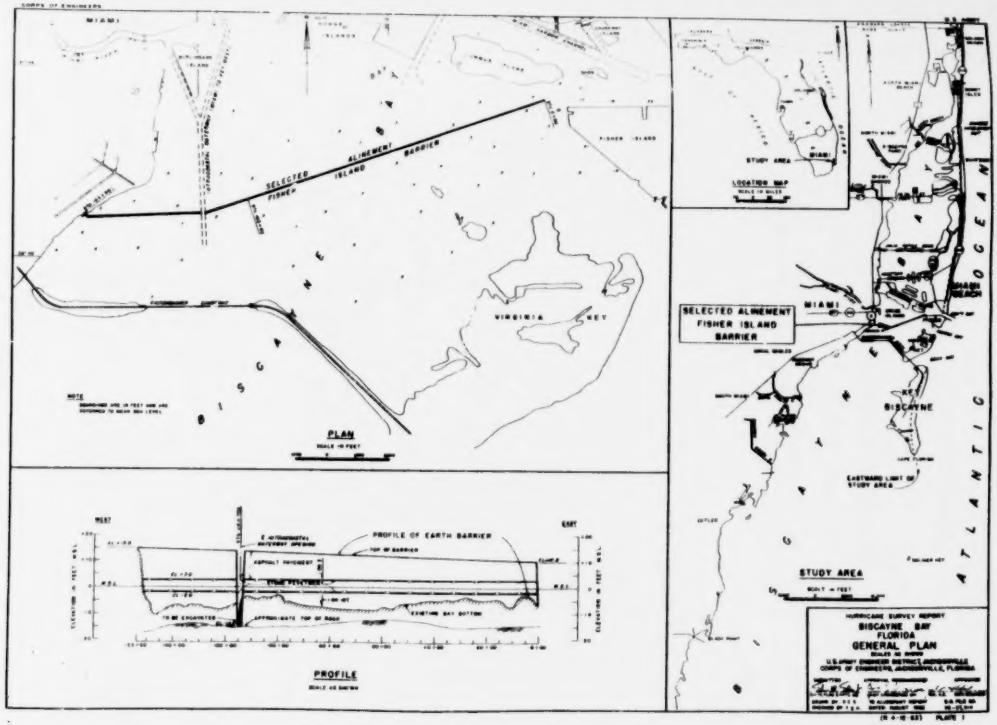
RESULTS OF DEAUTHORIZATION REVIEW. A letter was sent to the Board of Commissioners of Dade County on 8 February 1982 to elucidate the deauthorization procedure and to ask for their comments on the proposed action. On 17 March 1982, Dade County responded by concurring in the proposed deauthorization of the project. It said that unfavorable public opinion and other factors that arose at public hearings led the County to reassess its support to any barrier being constructed in Biscayne Bay. Resolution No. R-625-66, dated 20 June 1966, which was passed by the Dade County Board of County Commissioners, formally withdrew the County as the local sponsor for the project.

On 16 April 1982, public notices about the proposed deauthorization were sent to all known interested agencies and individuals. Four 3/ responses were received from the public notices, and they all concurred in the deauthorization.

1 Incl
General Plan

ALFRED B. DEVEREAUX, JR.
Colonel, Corps of Engineers
Commanding

3/ Department of Environmental Regulation, National Marine Fisheries Service, Fish and Wildlife Service, and Environmental Protection Agency.


CORPS OF ENGINEERS
MIAMI
SELECTED ALINEMENT
FISHER ISLAND BARRIER
VIRGINIA KEY
BISCAYNE BAY
NOTE
PLAN
PROFILE OF EARTH BARRIER
WEST
EAST
PROFILE
LOCATION MAP
STUDY AREA
SELECTED ALINEMENT
FISHER ISLAND
BARRIER
MIAMI
BISCAYNE
EASTWARD LIMIT OF
STUDY AREA
ATLANTIC OCEAN
HURRICANE SURVEY REPORT
BISCAYNE BAY
FLORIDA
GENERAL PLAN
PLATE 1

Division: North Central
District: Buffalo

D-73927-F

PROJECT INFORMATION SHEET

NAME OF PROJECT. HAMMONDSPORT, OSWEGO RIVER BASIN, NEW YORK

AUTHORIZATION. Flood Control Act, 18 August 1941, (H.D. 846/76/3).

LOCATION. The village of Hammondsport, New York, is located in Steuben County and is situated at the southern end of Keuka Lake.

DESCRIPTION. The lower portion of the Glen Brook, from its mouth at Keuka Lake to a point about 2,450 feet upstream, is carried by an existing concrete flume, the safe carrying capacity of which is limited by a 90° bend at its upper end to 1800 cubic feet per second (see attached map). The plan of improvement provides for:

a. Increasing the channel capacity by widening, deepening, and straightening the upper 700 feet of the existing flume.

b. Construction of reinforced-concrete cascades at the bend.

c. Clearing the channel above the flume.

d. Construction of four timber check dams in the channel above the flume to reduce debris deposited in the flume.

SUMMARIZED FINANCIAL DATA.

Estimated Project Costs (1959 Price Levels)

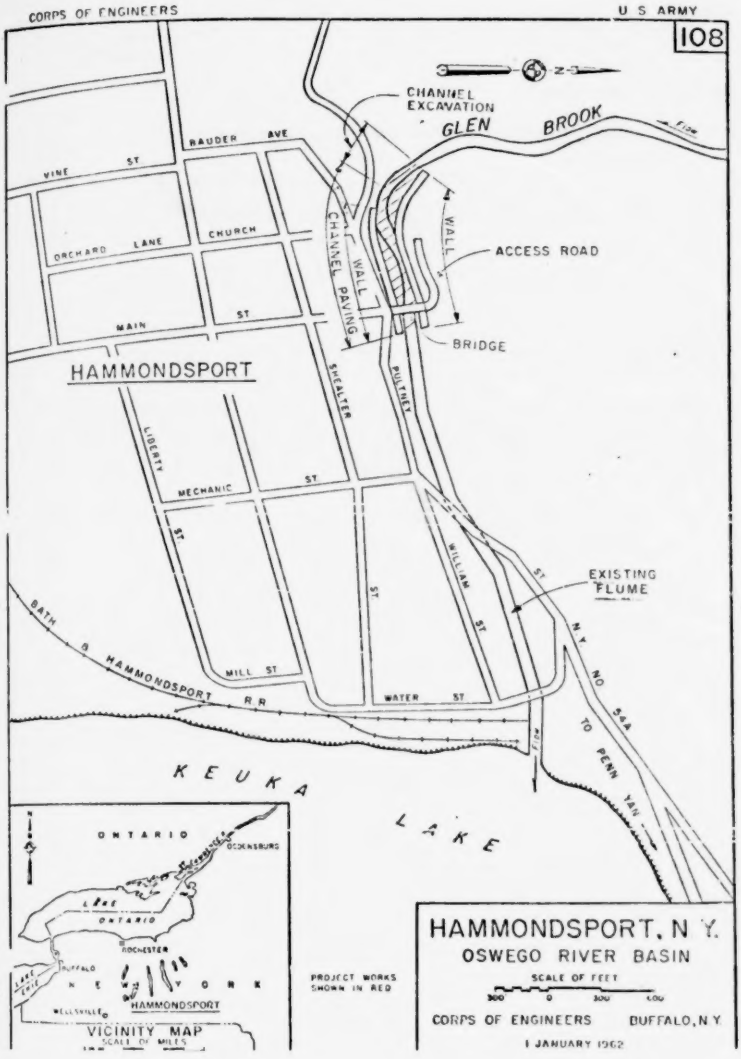
Federal	$938,000
Non-Federal (Lands and damages)	25,000
Total	$963,000
Funds Allotted to Date	$ 29,000
Last Year Funds Allotted	1949

REASONS FOR CLASSIFICATION OF DEFERRED: Project was reclassified "deferred for restudy" in 1960 due to lack of expression of interest on the part of local officials.

RESULTS OF DEAUTHORIZATION REVIEW: New York State Department of Environmental Conservation, as the Governor's representative for official review of all water resources projects, has indicated by letter dated 24 Nov 80 and at a meeting held on 13 July 1982 its agreement that the project be deauthorized.

1 Incl
Project Map

Joseph V. Credeur, MAJ
for ROBERT R. HARDIMAN
Colonel, Corps of Engineers
District Engineer


CORPS OF ENGINEERS
U S ARMY
108
CHANNEL EXCAVATION
GLEN BROOK
RAUDER AVE
VINE ST
ORCHARD LANE
CHURCH
MAIN ST
CHANNEL PAVING
WALL
L WALL
ACCESS ROAD
BRIDGE
HAMMONDSPORT
SHEALTER
PULTNEY
LIBERTY
MECHANIC ST
WILLIAM ST
EXISTING FLUME
BATH & HAMMONDSPORT RR
MILL ST
WATER ST
N Y NO 54A TO PENN YAN
KEUKA LAKE
ONTARIO
OGDENSBURG
LAKE ONTARIO
ROCHESTER
BUFFALO
NEW YORK
WELLSVILLE
HAMMONDSPORT
VICINITY MAP
SCALE OF MILES
PROJECT WORKS SHOWN IN RED
HAMMONDSPORT, N Y.
OSWEGO RIVER BASIN
SCALE OF FEET
300 0 300 600
CORPS OF ENGINEERS BUFFALO, N Y
1 JANUARY 1962

NCBPO

MEMORANDUM FOR RECORD

SUBJECT: Deauthorization of Hammondsport, NY project

Present: B. Price, Bflo District Corps of Engineers
R. Konsella, NYSDEC
A. Buddle, NYSDEC
C. Arthur Niver, Mayor, Hammondsport

1. At a meeting held 13 July 1982 concerning the Hammondsport, NY, Glen Brook Flume (upper portion) project, with the above listed persons in attendance, it was unanimously decided to recommend deauthorization since project as authorized will not meet flood control needs of community.

2. NYSDEC advised that as the Governor's rep for official review of all water resource projects it is their responsibility to coordinate with affected communities and recommend further action.

Division: North Atlantic
District: New York

Project Reference Number: I-73645-N

PROJECT INFORMATION SHEET

NAME OF PROJECT: TICONDEROGA RIVER, N.Y.

AUTHORIZATION: 1881 River and Harbor Act (HD 45/46/3)

LOCATION: Project runs from the mouth of the Ticonderoga River at Lake Champlain extending northwesterly up the river to the village of Ticonderoga.

DESCRIPTION: A channel, 8 ft. deep and 100 ft. wide from the 8 ft. contour in Lake Champlain to the railroad bridge, then 8 ft. deep, 60 ft. wide, to the village of Ticonderoga.

SUMMARIZED FINANCIAL DATA

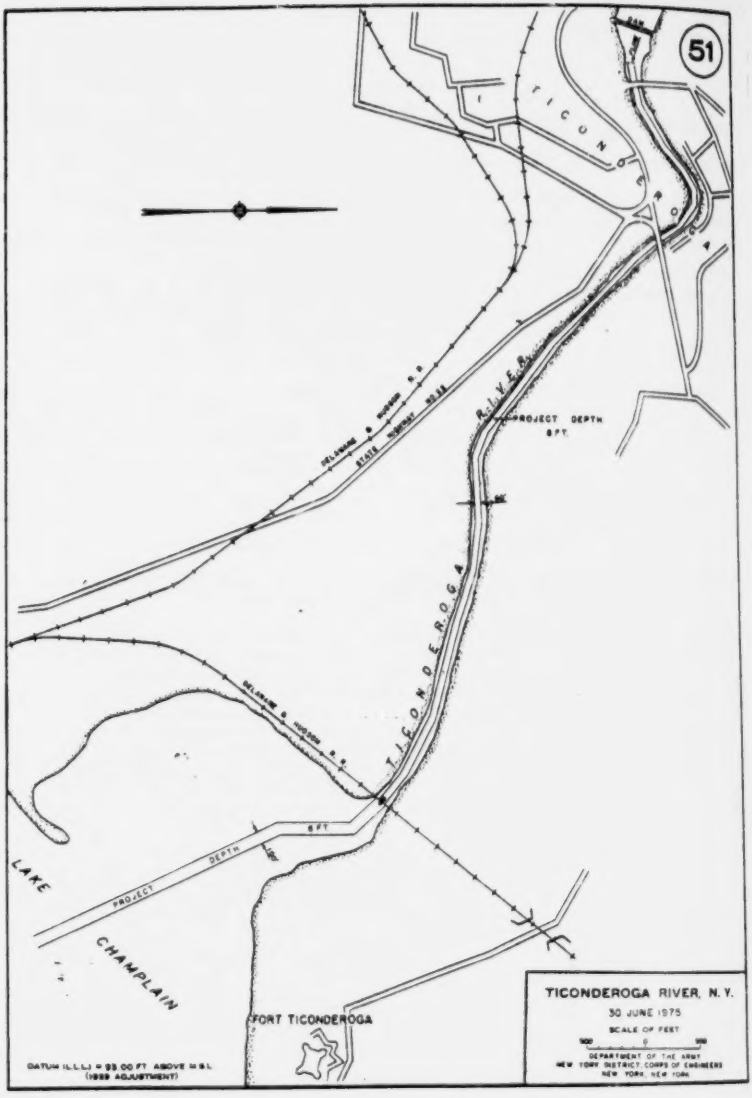
Estimated Project Costs (Current Price Level)

Federal	$2,500,000
Non-Federal (Reported to OCE)	-0-
Total	$2,500,000
Funds Allocated to Date	17,000
Last Year Funds Allocated	1892

REASONS FOR CLASSIFICATION OF INACTIVE: The project lacks justification as no commerce has been reported on the waterway since 1891.

RESULTS OF DEATHORIZATION REVIEW: Letters were mailed to the Commissioner New York State Department of Environmental Conservation, 22 March 1982, and the mayor of Ticonderoga, New York, 5 May 1982 regarding the proposed deauthorization. Written response from the New York State Department of Environmental Conservation stated that this project appeared to be sponsored by local interests rather than the state. No objections to the proposed deauthorization were received from the town of Ticonderoga. The mayor confirmed the lack of local interest by telephone on 25 August 1982.

W. M. SMITH, JR.
Colonel, Corps of Engineers
District Engineer


51
TICONDEROGA
PROJECT DEPTH 8 FT.
DELAWARE & HUDSON R.R.
STATE HIGHWAY 9N
TICONDEROGA RIVER
DELAWARE & HUDSON R.R.
8 FT.
PROJECT DEPTH
LAKE CHAMPLAIN
FORT TICONDEROGA
DATUM (L.L.L.) = 93.00 FT. ABOVE M.S.L. (1929 ADJUSTMENT)
TICONDEROGA RIVER, N. Y.
30 JUNE 1975
SCALE OF FEET
DEPARTMENT OF THE ARMY
NEW YORK DISTRICT, CORPS OF ENGINEERS
NEW YORK, NEW YORK

PROJECT INFORMATION SHEET

Division: Southwestern
District: Fort Worth, Texas

PROJECT REFERENCE NUMBER: I-75014-E

NAME OF PROJECT: Lake Fork Lake (Sabine River), Texas

AUTHORIZATION: Flood Control Act of 1970

LOCATION: The multiple purpose reservoir is located on Lake Fork Creek, a tributary of the Sabine River, and lies in portions of Wood, Rains, and Hopkins counties, Texas. The preliminary damsite is located at river mile 28.1 about 3.5 miles west of Quitman, Texas and approximately 85 miles east of Dallas, Texas.

DESCRIPTION: The plan of improvement provides for a earth and rock fill dam with a maximum height of 106.5 feet above the streambed and a total length of 16,130 feet, including an uncontrolled broadcrested type concrete spillway 100 feet long. The outlet works would consist of 12-foot diameter conduit controlled by two 5' 7" x 12' 0" slide gates. The reservoir would have a total controlled storage of 1,113,000 acre-feet, including 472,600 for flood control, 621,000 for water supply and 18,900 for sediment reserve.

The project is one of three short range multiple-purpose reservoirs recommended for authorization in a plan of development for the Sabine River Basin, which provides measures for flood control, water supply, recreation, and fish and wildlife conservation.

SUMMARIZED FINANCIAL DATA:

Estimated Project Costs (July 1974 Price Level)	$111,000,000
Federal	$111,000,000
Non-Federal	-0-
Total	$111,000,000
Funds Allocated to Date	-0-
Last Year Funds Allocated	-0-

REASONS FOR CLASSIFICATION OF INACTIVE: At the time that this project was reclassified as inactive, the Sabine River Authority was proceeding with a Non-Federal reservoir project on Lake Fork Creek. This action precluded a Federal project in that area. The Non-Federal reservoir project has been completed.

I recommend deauthorization of Lake Fork Lake as a Federal project in view of the fact that the Sabine River Authority has constructed the Non-Federal reservoir on Lake Fork Creek.

1 Incl (quad)
Map w/ltr

THEODORE G. STROUP
Colonel, CE
Commanding

LIST OF PROJECTS

Name	State(s)	Congressional District
Biscayne Bay	Florida	13, 14, & 15
Hammondsport, Oswego River Basin	New York	2
Ticonderoga River	New York	30
Lake Fork Lake(Sabine River)	Texas	1

98th Congress, 1st Session - - - - - - - House Document No. 98-49

REVIEW OF UNITED STATES STRATEGIC FORCES

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A DETAILED TECHNICAL ASSESSMENT REVIEW OF U.S. STRATEGIC FORCES, PURSUANT TO SUBSECTION 7 OF TITLE V, PUBLIC LAW 97-377

APRIL 19, 1983.—Referred to the Committee on Appropriations and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
11-012 O WASHINGTON: 1983

THE WHITE HOUSE,
Washington, D.C., April 19, 1983.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: On January 3, 1983, I established a bipartisan Commission to respond to the issues raised by the Congress regarding the Peacekeeper missile, possible alternatives to the Peacekeeper, and possible alternative ICBM basing modes. The report, which the Commission submitted to me, was delivered to you last week. Attached is a classified report prepared by the Department of Defense submitted pursuant to the provisions of subsection (7) of Title V of the Department of Defense Appropriations Act, 1983, enacted as part of P.L. 97-377. The attached document addresses the issues set out in subsection (7).

I am pleased to report to you that the distinguished group of Americans who served on the Commission have unanimously agreed on a package of actions, which I strongly support, and on which Secretary Weinberger, the Joint Chiefs of Staff, Secretary Shultz and the National Security Council have joined with me in supporting. They are as follows:

(1) Improve as a first priority the command, control, and communications for our strategic forces; continue with high priority the Trident submarine and D-5 missile programs; and continue the bomber and air-launched cruise missile efforts as planned.

(2) Proceed with the immediate production of the Peacekeeper missile, and deployment of 100 such missiles in existing Minuteman silos in the Francis E. Warren AFB area, which I propose as the alternative basing plan required by P.L. 97-377. Specifically, the first 50 missiles will replace the Minuteman missiles in the 400th Strategic Missile Squadron (SMS). In turn, the second 50 will replace the Minuteman missiles in the 319th SMS. I have chosen Francis E. Warren AFB because the existing silos at that location offer the best operational considerations.

(3) Commence engineering design of a small, single warhead ICBM. If strategic and technical considerations warrant, such a missile could be ready for full-scale development in 1987 and potential deployment in the early 1990's.

(4) Expand research into, and undertake the most rigorous examination of, all forms of defense against ballistic missiles. This includes work on penetration aids.

(5) Undertake a specific program to resolve uncertainties regarding silo and shelter hardness, a study of fratricide effects, and investigation of different types of land-based vehicles and launchers, particularly hardened vehicles.

Finally, I reconfirm that I am fully committed to continue to pursue ambitious and objective arms reduction negotiations with a goal of agreements that are balanced, promote stability in time of crisis, constitute meaningful force reductions, and are verifiable. As you know, our proposals to secure reductions of all types of weapons are before the Soviets in many forums.

I urge the Congress to join me now in this bipartisan effort to settle on a modernization plan for our strategic forces. For more than a decade, each of four administrations has made proposals for arms control and modernization that have become embroiled in political controversy.

Balancing a number of factors, the members of the Commission, the Secretary of Defense, Joint Chiefs of Staff, and I have all had to take fresh looks at our previous positions. Despite the range of views these groups have held in the past, we are presenting to you a unanimous view on this vital issue. Your support for the consensus can unite us in taking a major step forward in our common search for ways to ensure national security.

Sincerely,

RONALD REAGAN.

STRATEGIC FORCES
TECHNICAL ASSESSMENT REVIEW (U)

EXECUTIVE SUMMARY

31 March 1983

EXECUTIVE SUMMARY

Background on President's Modernization Program

Upon taking office, President Reagan initiated a review of U.S. strategic forces and the need to modernize them. On 2 October 1981, following completion of his review, he announced a strategic forces modernization program to ensure continued freedom of the United States and our allies from coercion or nuclear attack. The President directed the continued development of the Peacekeeper missile (then known as M-X), near-term deployment in existing intercontinental ballistic missile silos, and selection of a permanent basing mode by 1984. Over the next several months, Congress reviewed the President's modernization program and directed that selection of a permanent basing mode be accelerated to December, 1982. As a result, several basing alternatives were studied by the Air Force, with review by numerous panels. A permanent basing mode, closely spaced basing, emerged from these efforts, and on 22 November 1982, the President announced his decision to deploy 100 Peacekeeper missiles in this mode, near F. E. Warren Air Force Base, Wyoming.

In December 1982, Congress, in passing the Continuing Resolution for FY 1983 funding, reviewed the President's decision. Because it had questions on the need for intercontinental ballistic missile modernization as well as the viability of closely spaced basing, Congress subsequently requested submission of a report containing:

- A technical assessment of closely spaced basing.
- A technical assessment of other basing alternatives.
- A technical assessment of intercontinental ballistic missile alternatives.
- A comparative assessment of alternative non-intercontinental ballistic missile strategic programs.
- A reaffirmation of closely spaced basing or a proposed alternative.

The Need for Intercontinental Ballistic Missile Modernization

For over 20 years, the United States has relied on a combination of intercontinental ballistic missiles, strategic bombers, and submarine based missiles--known as the Triad--to deter Soviet aggression. The elements of the Triad complement one another to ensure that, under all conditions, a sufficient strategic force could survive to retaliate after a

potential Soviet attack. Attributes which intercontinental ballistic missiles bring to the Triad include accuracy and responsiveness; real-time communications with command authorities; short time-to-target; alert rates approaching 100%; and basing on U.S. soil. Historically, they have also been relatively invulnerable to Soviet attack.

Since the late 1960s, the Soviet Union has engaged in a massive strategic arms buildup that is creating a widening asymmetry between U.S. and Soviet forces, threatens our retaliatory capability, and is reducing the deterrent value of the Triad. They have deployed many thousands of increasingly accurate and powerful warheads on almost 1400 intercontinental ballistic missiles. This force provides the Soviets a capability to destroy most of our current intercontinental ballistic missile force using less than one-fourth of their present intercontinental ballistic missile inventory if the U.S. chose to ride out the entire attack.

The Soviets also have taken steps to reduce our ability to retaliate effectively against their strategic forces. They have reinforced the structures protecting their intercontinental ballistic missiles and much of their command and control network to the point where our most capable intercontinental ballistic missiles now have only limited ability to destroy them in a retaliatory strike. This imbalance in strategic capability -- the Soviets can threaten our intercontinental ballistic missiles while we have limited capability against theirs -- seriously undermines the strength of our nuclear deterrent. To redress this problem, the United States should:

- Deploy sufficient numbers of a new intercontinental ballistic missile with improved accuracy to neutralize the coercive advantage the Soviets now hold over our intercontinental ballistic missiles.
- Ensure basing sufficiently survivable to allow adequate decision time for credible, effective, timely retaliation, while retaining as many as possible of the unique characteristics provided by intercontinental ballistic missiles.
- Incorporate an inherent growth potential for the selected intercontinental ballistic missile modernization approach to counter Soviet responsive actions.
- Initiate deployment as quickly as possible to meet these military requirements and demonstrate our national resolve to maintain a stable strategic balance.

Intercontinental Ballistic Missile Modernization Alternatives

Modernizing the intercontinental ballistic missile portion of the Triad involves the development of a new missile and a basing system. In this review, four missile alternatives and nine methods of basing the missile were considered. The missile

alternatives were Peacekeeper, common missile, improved Minuteman III, and small missile. Basing alternatives included closely spaced basing, closely spaced basing with concealment, widely spaced basing, south side basing, multiple protective shelters, road mobile, hard road mobile, deep basing, and existing Minuteman silos. Additionally, the ability of the Trident II to accomplish the ICBM mission was analyzed. The various missile and basing alternatives are described below.

MISSILES

- **Peacekeeper.** A 195,000 pound missile that has completed initial development and is ready for flight testing.
- **Common Missile.** A variant of the Navy Trident II (D-5), which could be expected to be ready for flight testing in 1987.
- **Minuteman III.** An improved version of the fully developed and fielded solid propellant missile, which is the current mainstay of the land-based intercontinental ballistic missile force.
- **Small Missile.** A lightweight two or three stage solid propellant intercontinental ballistic missile which is currently in advanced technology development.

BASING

- **Closely Spaced Basing:** Missiles deployed in vertical superhardened silos spaced approximately 2000 feet apart.
- **Closely Spaced Basing With Concealment:** Missiles deployed as in closely spaced basing with more silos than missiles. The missile location is concealed through system design and operational procedures.
- **Widely Spaced Basing:** Missiles deployed in vertical superhardened silos spaced a few miles apart.
- **South Side Basing:** Missiles deployed in superhardened silos on the south side of mesas.
- **Multiple Protective Shelters:** Missiles deployed in horizontal shelters of relatively low hardness spaced approximately one mile apart, with more shelters than missiles.
- **Road Mobile - Soft:** Missiles deployed on mobile launchers which travel continuously on public roads.
- **Road Mobile - Hard:** Missiles deployed on hardened transporters which are deployed on military reservations with dash on warning capability.
- **Deep Basing:** Missiles deployed deep underground.
- **Existing Minuteman Silos:** Missiles deployed in existing Minuteman silos.

Missile Assessment

A detailed technical assessment of the four intercontinental ballistic missile alternatives was conducted, focusing on the areas of military capability, hardness, transportability, schedule, and development status. The results are summarized below.

The Peacekeeper missile rates outstanding in all categories except transportability. The size and weight of the missile and transporter are not compatible with existing public highways. Therefore, Peacekeeper transportability is marginal. It is noted, though, that special roads could be constructed so that Peacekeeper could be moved in a concealment mode. The other factors are rated outstanding based on the status of the development program and the hardness requirements incorporated into the missile hardware. The advanced inertial reference sphere guidance system provides high accuracy, and, with the Mark 21 warhead, excellent hard target capability. The footprint (target coverage) of the missile is large. Its high throw weight provides the flexibility to incorporate alternative payloads to respond to potential Soviet developments such as superhardening. The missile was designed to withstand loads and nuclear effects well beyond the capability of current intercontinental ballistic missiles. Peacekeeper is ready for flight test and can be ready for deployment in 1986.

The common missile was defined in the 1978 Air Force/Navy commonality study. The intent was to reduce costs by developing and building one missile to meet the needs of both services. No significant cost savings were identified, therefore no further common missile definition has occurred. Initiating a program today would not permit deployment of a new land-based missile until 1990 at the earliest. If it were configured for land and sea deployment, the common missile would have intercontinental ballistic missile deficiencies. Its military capability would be less than Peacekeeper since it would use a stellar-inertial guidance system which is less accurate at intercontinental ballistic missile ranges than the Peacekeeper advanced inertial reference sphere system. It would be possible to incorporate an advanced inertial reference sphere guidance system, achieving accuracy equivalent to Peacekeeper, but this would impose at least an additional one year delay in initial operational capability. The throw weight would be 40% lower than for Peacekeeper leading to reduced payload flexibility, and footprint capability. The hardness of the common missile, as defined in the 1970s, would be less than Peacekeeper. Although it would be smaller than Peacekeeper, the common missile would still require a special transport vehicle that would not be compatible with existing public highways.

Improved Minuteman III would incorporate the advanced inertial reference sphere guidance system, achieving accuracy equivalent to Peacekeeper. However, its military capability would still be less than Peacekeeper because of throw weight and footprint limits. The missile would have limited flexibility to incorporate alternative payloads. Its hardness would be limited by the current missile structure, and is much less than Peacekeeper's. Incorporating missile modifications would require design, development, and test programs so that 1988 would be the earliest possible initial operational capability. The missile is currently transported over the public highway system in areas where it is deployed. Although it is feasible to transport the entire missile, the system is designed for alert and launch from a vertical position. Therefore, significant modifications would be required for use in a mobile deployment.

The small missile could be available in 1990 at the earliest, because it is currently only in concept development; that is, studies are under way but no component or subsystem development has been initiated. The military capability of the small missile is dependent on the guidance system used. In a silo basing mode advanced inertial reference sphere could be used, giving accuracy comparable to Peacekeeper. In a mobile basing mode, with a stellar inertial guidance system used, the accuracy would be less. It may be possible to incorporate an advanced inertial reference sphere system, giving high accuracy, in a mobile deployment. This would impose at least a two to three year delay in initial operational capability. The missile has very limited payload flexibility because of its low throw weight. The small missile could have a hardness equivalent to Peacekeeper. It is small enough to be transported by truck over the existing public highway network.

System Alternatives

Detailed technical assessments of the basing alternatives were accomplished by considering the applicability of the four missile alternatives to each of the basing alternatives. Systems were sized to achieve a normalized capability of 1000 warheads. The one exception was multiple protective shelters, which was sized according to the baseline system of the 1979-1981 period (200 missiles). Based on the results of the missile assessment, Peacekeeper was used as the baseline missile for all alternatives where its deployment is practical. Due to Peacekeeper's size and weight, large vehicles which are not compatible with existing public highways are required for movement, therefore, Peacekeeper was not considered in the mobile alternatives; the small missile is used as the baseline for these alternatives. Additionally, the small missile and improved

Minuteman were selected as alternative baseline missiles for closely spaced basing and Minuteman silos, respectively. All other missile/basing combinations which were deemed feasible were considered as excursions. Baseline systems and excursions are shown in Table 1.

Table 1. Baseline System Alternatives

Basing Mode	Missile (Number of Missiles/Number of Silos or Shelters)			
	Peacekeeper	Common	Improved Minuteman III	Small
Closely Spaced	100/100	170/170*	350/350*	1000/1000
Closely Spaced With Concealment	100/300	170/300*	350/1050*	—
Widely Spaced	100/100	170/170*	350/350*	—
South Side	100/100	170/170*	350/350*	—
Multiple Protective Shelters	200/4600	—	—	—
Road Mobile - Soft	—	—	350/350*	1000
Road Mobile - Hard	—	—	350/350*	1000
Deep Basing	100	—	—	1000*
Existing Minuteman Silos	100/100	170/170*	350/350	—

*Excursions from baseline alternatives

Basing Assessment/Evaluation

The technical assessment and evaluation were conducted for each baseline system alternative as well as the missile excursions. The technical assessments addressed how the systems derive survivability; likely Soviet approaches for attacking the system; siting environment, and public interests; the ability of the systems to respond to Soviet threat growth; technical issues/risk due to the status of the technology required by the basing mode; and arms control and foreign policy issues.

The evaluation, which incorporated the results of the technical assessments, involved criteria in three areas: strategic capability, system feasibility, and policy considerations.

Strategic Capability

- **Deterrence.** The ability to discourage coercion or nuclear attack on the United States or its allies. Deterrence is measured from the point of view of the adversary; therefore, the assessment is from a Soviet view of our military capability. Subfactors of deterrence are: U.S. launchable weapons, Soviet attack durations, Soviet attack requirements, Soviet attack confidence, U.S. military capability, including prompt hard target capability and U.S. survivability.

- **Military Capability.** The capability to place Soviet hard targets at risk and be promptly launched to meet military objectives. The assessment is from a United States view of capability. Subfactors include: Soviet hard targets at risk, and U.S. promptness, command, control, and communications survivability, retargeting capability, alert weapons, and launch opportunities from a U.S. view.

- **Survivability.** Measure of the system capability to survive an attack from the U.S. view.

- **Endurance.** Measure of the system to maintain a launch capability for a protracted period in a post-attack environment for those surviving assets.

- **Resiliency.** An assessment of the system capability to counter responsive threats. Three subfactors are: survivability against long term responsive threats, Soviet threat stress, and U.S. growth options.

- **Defendability.** An assessment of the adaptability of ballistic missile defense, to counter threat changes and/or growth. The assessment includes both potential effectiveness and deployment implications including system size, technology requirements and impact. Subfactors include: defense system contribution to deterrence, military capability, survivability, endurance, resiliency, feasibility, and arms control.

System Feasibility

- **Cost.** Weapon system costs (including development, production and military construction), operations and support costs, and the total life cycle cost (10 year). All alternatives have been costed on a consistent basis with the best available system definition and cost data. The relative confidence in the cost estimates varies with the maturity of the system definition.

- **Schedule.** An assessment of the year of initial operational capability (10 fielded missiles), and the year of full operational capability. Two subfactors: initial operational capability schedule and full operational capability schedule are included.

- **Technical Risk.** An assessment of the system in terms of the technical risk involved in development, production, deployment, and operation.

- **Operability/Supportability.** An assessment of the system requirements in terms of four subfactors: operability, maintainability, security, and logistics.

- **Siting.** An assessment of siting opportunities in terms of the number of geographical areas that meet system requirements and a measure of flexibility of accommodating presently unforeseen constraints. Siting technical feasibility considerations are included.

- **Environmental.** An assessment of the environmental impact of a system ranging from socioeconomic to resource impact. Six subfactors used in this assessment are: socioeconomics, biology, air quality, water resources, land use, and cultural resources.

- **Public Interface.** A measure of the frequency of travel/movement on public roads of the nuclear warhead and/or missile during system operation.

Policy Considerations

- **Arms Control.** An assessment of the compliance of the system with provisions of existing strategic arms agreements (as consistent with the interim no-undercut policy) and support for U.S. objectives in future strategic arms agreements. The interim no-undercut policy, which is neither permanent nor legally binding, generally implies restraint from actions that would represent irreversible acts with respect to provisions of existing agreements. Subfactors to assess compatibility with existing agreements are: relocation or construction of additional fixed intercontinental ballistic missile launchers, and launcher modernization constraints. An assessment of an alternative's support for U.S. START objectives of militarily-significant reductions, adequate verification and leverage for successful negotiations. Six subfactors are used: system availability (leverage is highly dependent on the availability of the system; a system with a later availability provides less leverage in the current START negotiations than a system with a nearer term initial operational capability), maintenance of an active missile production capability, force effectiveness (capability to meet mission requirements with reduced forces), near-term demonstration of a U.S. modernization program, credible prompt offensive capability that diminishes Soviet utility of large intercontinental ballistic missile forces (Soviet incentive to negotiate reductions of large intercontinental ballistic missiles), and effective verification.

- **Foreign Policy.** The impact of the alternative on perceptions of the United States foreign policy in two areas: deterrent credibility and support for NATO modernization. Perception of support for NATO nuclear force modernization is likely to be heavily influenced by the availability of the system. A near-term deployment has greater influence on allied support of NATO nuclear force modernization than systems with later availability. Subfactors are near-term demonstration of U.S. resolve and will to modernize, perception of U.S. capability to counter the threat created by massive Soviet deployments, contribution to flexible response capability, and commitment to sovereign basing.

Evaluation Results

The results of the evaluation for the baseline alternatives are summarized below. It is noted here that the ratings are based on a desired 1986 initial operational capability. The Trident II program, although it could not be evaluated on the same basis as the intercontinental ballistic missile alternatives, is also discussed below.

Closely Spaced Basing

A deployment of 100 Peacekeeper missiles in closely spaced basing would enhance deterrence by significantly improving United States military capability. Additionally, its destruction by the Soviets would be difficult and uncertain. A significant force would survive the first Soviet attack wave and be available for prompt retaliation. A highly-coordinated multi-wave Soviet attack would be required to negate a closely spaced basing deployment. Such an attack would exhaust the SS-18 inventory. The system can endure for a fairly long period of time by going into a powerdown mode. A number of potential sites have been identified, with F. E. Warren AFB, Wyoming the preferred deployment area. The small land area required leads to low environmental impacts. Since the entire deployment area would be fenced by this concept, public exposure to the system would be minimized. Leverage against advanced threats could be achieved by using one of the growth options such as countermeasures, concealment, or ballistic missile defense. The use of a growth option with closely spaced basing would raise the Soviet attack price to such a level that the post-attack strategic balance could not be viewed favorably by the Soviets during the 1990s. The system would be compatible with SALT I and/or II if either were in effect at the time of deployment, is verifiable, provides negotiating leverage, and supports the U.S. objective of significant reductions. This deployment would demonstrate U.S. resolve to modernize our intercontinental ballistic missiles and would encourage support of NATO nuclear force modernization. The silo hardness definition requires some additional verification testing but based on the DNA Silo Test Program, this appears to have low technical risk. The system could be available in 1986 at a cost of $26.4 billion to deploy and an additional $293 million per year for operations and support.

Closely Spaced Basing With Concealment

Closely spaced basing with concealment (100 missiles in 300 silos) preserves the positive aspects of closely spaced basing and provides even greater deterrence capability because of even greater effectiveness against Soviet threats. However, there is slightly greater technical risk because of the need to preserve location uncertainty. A larger land area will be required, which reduces siting flexibility, increases environmental impacts,

and reduces the ability for treaty compatible defense, although, due to increased leverage, defendability overall is outstanding. Endurance, operability, schedule, and resiliency are equivalent to closely spaced basing. Public exposure would increase because of the need to move the missile from an area support center to an unadjacent array. As with closely spaced basing, the system would be compatible with SALT I and/or SALT II if either were in effect at the time of deployment, provides leverage for successful negotiations and supports arms reductions. It could be effectively verified through national technical means and additional cooperative measures. The system would cost $36.8 billion to deploy and an additional $400 million per year for operations and support.

Closely Spaced Basing - Small Missile

Closely spaced basing with 1000 small missiles would have outstanding survivability and deterrence capability since it preserves the characteristics of closely spaced basing with a large increase in the number of silos the Soviets would need to target. However, it could not be available until after 1990 because of the small missile development status. The advanced inertial reference sphere guidance system would lead to hard target kill capability equivalent to Peacekeeper. The increased system size reduces siting opportunities, and increases environmental impacts, public exposure to the system, and operability concerns. Endurance, resiliency, and foreign policy are the same as for closely spaced basing with Peacekeeper. The later initial operational capability gives less negotiating leverage than other earlier initial operational capability basing modes. In addition, its deployment would require the United States to reevaluate its proposed START missile ceiling. The system would cost $69.7 billion to deploy and an additional $650 million per year for operations and support.

Widely Spaced Basing

Widely spaced basing would provide fair deterrence capability. The major shortcoming of this system is its low effectiveness against projected and responsive Soviet threats. It would also be deployed over a large land area, increasing the land acquisition burden and related difficulties, and reducing siting flexibility. This would also make ballistic missile defense more difficult and complicate operability. The system, which could be available in 1986 depending on land acquisition, would, like closely spaced basing, generally support arms control and foreign policy objectives. Technical risk would be identical to closely spaced basing. Public exposure, though slightly higher than closely spaced basing, would be low. Resiliency would be reduced, with ballistic missile defense

and backfill (construction of new silos between widely spaced silos) to closely spaced basing possible. The system would cost about the same as closely spaced basing, with $28.9 billion required for deployment and $300 million per year for operations and support.

South Side Basing

South side basing can make a contribution to the United States posture against current threats. However, against projected and responsive threats, the effectiveness of this system decreases. Unlike widely spaced basing, suitable sites for south side deployment are extremely limited. Siting constraints make ballistic missile defense much more difficult, and with the limited siting opportunities, expansion becomes a problem. This reduces system resiliency. The system could be available in 1988. Technical risk is low and relates to superhardening and constructibility. The remote locations of potential sites leads to high environmental impacts. Arms control and foreign policy for this alternative are generally the same as for the other alternatives discussed above. However, the somewhat later initial operational capability could result in less negotiating leverage. The system would cost $27.6 billion to deploy and $300 million per year for operations and support.

Multiple Protective Shelters

The military capability of Peacekeeper in multiple protective shelters is outstanding based on the deployment of 200 missiles. The baseline concept of 200 missiles and 4600 shelters is effective against the number of warheads in the current Soviet arsenal. This effectiveness could be maintained against a constrained threat. However, in the absence of constraints on total number of reentry vehicles, the projected threat could overwhelm the multiple protective shelter system without an expansion in the number of shelters. In the face of an unconstrained threat, the system's survivability is low. However, the outstanding military capability would contribute to deterrence. A major drawback to multiple protective shelters is the large deployment area and construction requirements, which leads to substantial environmental impacts. This also limits system expansion, leading to a lower resiliency rating. Siting is fair, based on the identification of a limited number of suitable areas, and defendability is good since an effective non-treaty compatible defense is possible. There is technical risk associated with preservation of location uncertainty. System size and concealment requirements lead to significant operability concerns. Foreign policy and endurance are the same as for the superhardened alternatives. Multiple protective shelter would be compatible with SALT I and/or SALT II, if either were in effect at the time of deployment, is verifiable through national

technical means, provides negotiating leverage, and is compatible with the U.S. goal of reduced forces. The system would cost $49.4 billion for deployment and $770 million per year for operations and support. System initial operational capability could be achieved in 1988.

Road Mobile - Soft

A continuously road mobile system has very high survivability. Its military capability is not as good as most other alternatives since it has limited hard target kill capability (reduced accuracy). Improved accuracy may be possible with a two to three year delay in initial operational capability. The survivability with reduced military capability combine to still contribute to deterrence value. This road mobile system relinquishes the protection offered by a secure area on a military reservation for major exposure to the public. It is manpower intensive. Significant cost penalties are incurred: operations in nonsecure areas and operations over large areas necessitate 20 to 30 maintenance and security locations with associated command, control, and communication connectivity. Technical risk would be determined primarily by a new, highly reliable transporter which would have to be developed. The system depends on development of a new small missile and therefore cannot be deployed until 1990. Public interface considerations could be a negative influence on meeting the IOC. System endurance following attack would be lower than the fixed alternatives since it would depend on resupply and personnel availability. Arms control and foreign policy impacts are generally the same as for the alternatives discussed above. However, verification would require additional cooperative measures and the proposed START ballistic missile ceiling would have to be reexamined. The decreased accuracy and system availability would reduce negotiating leverage. The later initial operational capability also would lessen influence on NATO nuclear force modernization. The system would cost $38.2 billion to deploy and almost $3 billion per year for operations and support. Defendability is not applicable to this system.

Road Mobile - Hard

Deployment of the small missile in hardened vehicles on military installations with dash-on-warning capability would provide high survivability with sufficient warning. Like the road mobile alternative discussed above, the system would have limited hard target capability, unless initial operational capability is delayed until the mid-1990s. Endurance and schedule for this system would also be the same as for the public highway mobile system. Defense of the system would be possible because of the smaller area. However, since the defense system would probably not be compatible with the Anti- Ballistic

Missile Treaty, defendability is rated fair. Technical risk would be somewhat higher than the other mobile options, since the transporter must be harder than any vehicle previously built, achieve fairly high speeds for a vehicle of its weight, and be very reliable. The need for adequate warning to achieve the survivability is a significant factor in system operation. Operability is better than for the public highway alternative because of the smaller operating area, but the large number of vehicles and missiles is still a maintenance concern. Public interface is reduced since the system would be restricted to military installations during normal operations. However, the restriction to military installations reduces siting opportunities and the need to construct new roads increases environmental impacts. Arms control and foreign policy objectives are the same as for the above mobile options. Verification would require additional cooperative measures, and deployment would demonstrate resolve to modernize. However, decreased accuracy and system availability would reduce negotiating leverage. The later initial operational capability of the system also would lessen its influence on NATO nuclear force modernization. The system would cost $45.7 billion to deploy and over $2.3 billion per year for operations and support.

Deep Basing

Deep basing has outstanding survivability against projected threats, very long endurance since it is self contained, and resilience to responsive threats. Due to the inability of the attacker to determine with confidence the probable survivability levels of a deep-based site and to monitor the progress and success of an attack, he has a low level of confidence in ensuring system kill. Its lack of prompt response reduces military capability, but the outstanding survivability leads to a good contribution to deterrence. Deep basing cannot be available until the 1990s, which will lessen the perception in NATO countries of the United States' resolve to modernize, and would entail greater technical risk than most of the other alternatives, predominantly in the missile egress area. This risk may, however, be resolved as the design matures. A limited number of sites are candidates for deployment and environmental impacts would be high during the construction period. Operability would be fair. New verification techniques may be required, leading to a slightly lower arms control rating. The system supports foreign policy objectives. It would cost $60 billion for deployment and $420 million per year for operations and support. Defendability is not applicable for this system.

Existing Minuteman Silos - Peacekeeper

The deployment of 100 Peacekeeper missiles in existing Minuteman silos provides the United States with a substantial improvement in prompt hard-target-kill capability. This

alternative allows near-term availability (1986) and has minimal environmental impact, since the sites already exist. It complies with the Strategic Arms Limitation Treaties, is verifiable, and would demonstrate resolve for intercontinental ballistic missile modernization. The system survivability is lower than other alternatives when viewed in isolation from other elements of the Triad. However, the increased military capability still contributes to deterrence. The system endurance, as a result of the low survivability, would be less than for the other fixed Peacekeeper alternatives. Technical risk would be low, as would public exposure. There would be some increased operability requirements beyond that of the current Minuteman force. Defense is possible with a non-treaty compatible system. Resiliency is poor, with the addition of defense the only option. Arms control and foreign policy are outstanding because the system would provide negotiating leverage and demonstrate U.S. resolve to modernize. It would be consistent with SALT I and/or SALT II if either were in effect at the time of deployment, and is verifiable by existing means. Deployment would cost $16.6 billion with a minimal increase in current Minuteman operations and support costs.

Minuteman Silo - Improved Minuteman

This alternative possesses many of the same attributes as Peacekeeper in Minuteman. Its initial cost is lower, but it would not be available until 1988. Although it generally supports arms control and foreign policy objectives, since it is not a new system, and is not as substantial an addition to our strategic forces, it provides only limited negotiating leverage and shows much less resolve to modernize our forces. System endurance would be lower than for Peacekeeper in Minuteman silos since this alternative does not have a powerdown mode. The system would cost $9.3 billion to deploy with no increase in operations and support costs over current Minuteman. However, while this alternative may have a low initial acquisition cost, it would require prolonging the life of our aging Minuteman force. This may lead to frequent subsystem refurbishment requirements and subsequently higher cost.

Trident II

Substituting the Trident II for intercontinental ballistic missile modernization would require that the United States forego an early capability for prompt hard target retaliation. This alternative also would require that an increased portion of the strategic workload be accomplished by the sea-based and air-breathing forces, would allow Soviet concentration on both offense and defense against these two elements, and would reduce our hedge against degradation or failure of the remaining strategic force elements. The earliest initial operational capability for Trident II is late 1989. This date cannot be

accelerated. Under the current or even accelerated SSBN procurement program, it would be 1993 before Trident II could actually assume the hard-target single integrated operational plan role that the Peacekeeper can provide in the 1980s.

Intercontinental Ballistic Missile Modernization and Triad Effectiveness

The results of this technical assessment and evaluation were based on evaluating alternatives for modernization of the intercontinental ballistic missile force in isolation. However, as previously mentioned, intercontinental ballistic missiles represent only one element of our strategic forces. Future intercontinental ballistic missile deployments must be viewed in terms of how they combine with our other current and planned strategic forces to complicate Soviet attack planning, reduce Soviet confidence in overall attack success, and stress Soviet technological developments.

How well a new intercontinental ballistic missile deployment combines with the existing Triad could be assessed through its contribution to total Triad effectiveness. The Minuteman silo alternatives would increase Triad military capability. However, they would be susceptible to the same Soviet threats as the existing Minuteman force. No new targets would be added, and the existing targets would be no harder for the Soviets to attack.

The alternatives which involve superhardened silos, closely spaced basing closely spaced basing with concealment, widely spaced basing, and south side basing would increase Triad effectiveness. In addition to increasing Triad military capability, they would require Soviet force structure changes in order for them to have any realistic attack capability. The small MIRVed warheads which the Soviets have been deploying would be ineffective against these alternatives. The Soviets would have to reverse fractionate their forces: i.e., move towards fewer, larger yield warheads. Closely spaced basing imposes a further requirement: development of time-on-target control and/or totally new threats. The attack requirements for closely spaced basing would be such that the Soviets would find it difficult to attack it, our Minuteman force, and our bomber force at the same time.

Deep basing would increase Triad effectiveness since it could not be attacked by any foreseeable Soviet threat. However, the lack of prompt response in this system would lead to a smaller contribution to Triad military capability. Multiple protective shelters would lead to a substantial increase in Triad military capability. A shortcoming is that

the soft multiple protective shelters are vulnerable to the same threats as our current Minuteman force. The large number of multiple protective shelters would stress the Soviet's ability to target both the multiple protective shelters and Minuteman forces.

The mobile alternatives would provide a totally new element for Soviet attack planning to face. Their planning would entail the additional requirement of finding the target. Because the missiles would be dispersed over a large area, the Soviets would have to detonate a large number of weapons in a barrage attack to have high confidence of destroying the targets. The use of a hardened vehicle and incorporation of a dash capability would further complicate Soviet attack planning.

Providing a ballistic missile defense of any of these alternatives would raise the attacker's uncertainty in the outcome of the attack and increase the attack price, or alternatively increase the number of surviving intercontinental ballistic missiles. The effectiveness of the defense depends to a great measure on the basing mode of the defended missiles. A ballistic missile defense configured to comply with the anti-ballistic missile treaty constraints on numbers of launchers, radars, and interceptors would be effective in defense of the closely spaced basing alternatives, but would have limited utility defending other basing options.

Expanding the Trident II program would contribute survivability and hard target capability, but would constitute a major step away from a Triad. It would forego those unique and essential ICBM characteristics which provide the broad diversity needed for strategic deterrence.

Selection of an ICBM Modernization Approach

The results of the review of intercontinental ballistic missile modernization alternatives discussed above, indicate that only one missile, Peacekeeper, can meet the 1986 initial operational capability. Further, this date can only be achieved for Peacekeeper in closely spaced basing, closely spaced basing with concealment, widely spaced basing, or Minuteman silos. However, this should not be construed to mean that the other alternatives do not have merit.

A key objective in selecting a path for intercontinental ballistic missile modernization is that our intercontinental ballistic missile force be resilient. That is, we must select an approach which will contribute to strategic force effectiveness into the 21st

Century. Resiliency was evaluated for all system alternatives, indicating that some systems can, by themselves, remain effective against Soviet reactive development through the addition of growth options. An alternative approach would be to deploy more than one intercontinental ballistic missile system: for example, one which meets near-term objectives, and another in the 1990s which will meet longer term objectives.

In other words, we must strive for flexibility in our intercontinental ballistic missile force. Mid- and far-term planning should provide several options since potential outcomes are not easily projected. Having a mix of alternatives available would also improve our arms control/reduction negotiating leverage. The simple fact that we have a range of options, responsive to whatever path the Soviets pursue, could eliminate the need for new deployments and could even lead to bilateral arms reductions pursuant to future negotiations.

Conclusions

An urgent need exists to modernize the U.S. intercontinental ballistic missile force. Over the past 20 years many deployment alternatives have been examined with the intent of finding one which could ensure a survivable and militarily effective intercontinental ballistic missile force while preserving the many unique capabilities which intercontinental ballistic missiles provide to the U.S. strategic posture. This review of the most viable ICBM modernization alternatives suggests the following:

- Soviet intercontinental ballistic missile accuracy and capability improvements have been predicted since the early 1970s and have now come true sooner than expected.
- Current Soviet intercontinental ballistic missile capabilities have created dangerous and exploitable strategic nuclear force-on-force asymmetries. The United States must correct this problem as quickly as possible.
- To demonstrate national resolve and insure a strong U.S. START negotiating position, the United States needs to make a positive decision now on intercontinental ballistic missile modernization. That decision should include a modernization alternative which can begin to correct current U.S. force deficiencies at the earliest possible date.
- There are technically viable intercontinental ballistic missile deployment and technology program alternatives which, if implemented, could: redress the current imbalance in United States-Soviet strategic force capabilities; significantly enhance the United States ability to deter Soviet actions; add leverage and impetus to the U.S. START negotiating position; and provide for inherent growth potential to cope with a possible increase in the Soviet threat. The earliest possible initial operational capability for intercontinental ballistic missile modernization alternatives is 1986.

- There may not be a single basing alternative which simultaneously can enhance ICBM survivability and preserve the unique deterrent characteristics of intercontinental ballistic missiles—all within the constraints of cost, technical viability, arms control, and environmental compatibility. Consequently, a combination of deployment and technology program alternatives may represent the best approach for modernizing the U.S. intercontinental ballistic missile force.

- Based on this review, four intercontinental ballistic missile modernization program alternatives have been structured as depicted in Figure 1. Each consists of near-term deployment, technology development, and potential follow-on deployments.

Alternative	Near-Term Deployment	Technology Development Program	Potential Follow-On Deployment
A	Peacekeeper in Minuteman silos	• Superhard silos • Small missile • Hard road mobile • Deep basing • Ballistic missile defense	• Peacekeeper in -Superhard silos -Deep basing • Small missile continuation • Ballistic missile defense
B	Improved Minuteman in Minuteman silos	• All of those above • Peacekeeper missile development and test	• Peacekeeper in -Superhard silos -Deep basing • Small missile continuation • Ballistic missile defense
C	Peacekeeper in new hard silos (wide spacing)	• Small missile • Hard road mobile • Deep basing • Ballistic missile defense	• Peacekeeper - Backfill to close spacing - Deep basing • Small missile continuation • Ballistic missile defense
D	Peacekeeper in new hard silos (close spacing)	Same as C	• Peacekeeper -Deep basing • Small missile continuation • Ballistic missile defense

Figure 1. Intercontinental Ballistic Missile Modernization Program Alternatives

All alternatives would provide a near-term increase in prompt hard target kill capability. Alternatives A, C, and D, demonstrate resolve to modernize and provide increased negotiating leverage. Alternatives C and D impose an increased cost to the Soviets, as they would be forced to reverse-fractionate to threaten the systems.

Alternative D has the added advantage of very high resiliency, and would force the Soviets to develop new attack strategies and advanced threats. Alternative B has the advantage of lowest initial cost but the disadvantage of weaker demonstration of resolve and reduced negotiating leverage. It does not require the Soviets to develop new threats and has low resiliency, which is also true for alternative A. Further, improving Minuteman would require prolonged life for our aging Minuteman force and provide limited payload flexibility to respond to Soviet superhardening. Alternatives C and D require near-term superhardening technology validation, and alternative C has low effectiveness against projected and responsive Soviet threats.

The technology development programs for all alternatives would complicate Soviet planning and provide flexibility to respond to any future Soviet developments.

98th Congress, 1st Session - - - - - - - - House Document No. 98-50

SUPPLEMENTAL APPROPRIATIONS

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROPOSED SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 1984 AND AMENDMENTS TO THE REQUEST FOR APPROPRIATIONS FOR THE FISCAL YEAR 1984

APRIL 20, 1983.—Referred to the Committee on Appropriations and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
11-011 O WASHINGTON: 1983

THE WHITE HOUSE,
Washington, April 20, 1983.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I ask the Congress to consider requests for supplemental appropriations for fiscal year 1983 in the amount of $841,372,430 and amended appropriations requests for the fiscal year 1984 in the amount of $2,622,269,125. The amendments include requests for reductions in appropriations for the fiscal year 1984 totaling $587,367,000. These reductions are offsets in part to increased 1983 appropriations included in Title I of Public Law 98–8 (the Jobs Bill) and are necessary to minimize the impact of these increases on future budget deficits.

The details of these proposals are set forth in the enclosed letter from the Director of the Office of Management and Budget. I concur with his comments and observations.

Respectfully,

RONALD REAGAN.

Enclosures.

[Estimate No. 4; 98th Congress, 1st Session]

EXECUTIVE OFFICE OF THE PRESIDENT,
OFFICE OF MANAGEMENT AND BUDGET,
Washington, D.C., April 20, 1983.

The PRESIDENT,
The White House.

SIR: I have the honor to submit for your consideration requests for supplemental appropriations for the fiscal year 1983 in the amount of $841,372,430 and amendments to the request for appropriations for fiscal year 1984 in the amount of $2,622,269,125. The amendments include reductions in FY 1984 appropriations totaling $587,367,000 to offset in part the fiscal year 1983 appropriations increases included in Title I of Public Law 98–8 (the Jobs Bill). These offsets are necessary as part of your policy to minimize the impact of this legislation on budget deficits in FY 1984 and later years.

I have carefully reviewed the proposals contained in this document and am satisfied that these requests are necessary at this time. I recommend, therefore, that these proposals be transmitted to the Congress.

Respectfully,

DAVID A. STOCKMAN,
Director.

Enclosures.

OTHER SUPPLEMENTAL AND

AMENDMENT REQUESTS

Senate

1984 Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Proposed Amendment	1983 Revised Request
III-4	Miscellaneous items	$165,000	$75,000	$240,000
III-24	Salaries, officers and employees	$6,989,000	$18,000	$7,007,000

1984 Budget Appendix Page	Heading	1984 Budget Request	1984 Proposed Amendment	1984 Revised Request
I-A1	Miscellaneous items	$40,981,100	$100,000	$41,081,000

LEGISLATIVE BRANCH

HOUSE OF REPRESENTATIVES

1984 Budget Appendix Page	Heading	1984 Budget Request	1984 Proposed Amendment	1984 Revised Request
I-A3	Administrative Provisions (Insert the following language immediately after "SEC 102":) SEC. 103.Section 101(e) of Public Law 97-276 is amended by inserting after the comma following "JOINT ITEMS", "Contingent Expenses of the House", "Funds appropriated for the Office of the Attending Physician shall include an allowance of $600 per month for a Senior Medical Officer while on duty in the Attending Physician's Office and", An amount not to exceed $19,000 of the unobligated balance of the appropriation for the Office of the Attending Physician for the Fiscal Year 1982 shall remain available for obligation during Fiscal Year 1983.	---	language	---
I-A3	Office of the Attending Physician (In the appropriation language under the above heading, insert an allowance of $600 per month to one senior medical officer while on duty in the Attending Physician's Office; (3) immediately after "(2)".)	$646,000	$7,200	$653,200

LEGISLATIVE BRANCH

Joint Items

1984 Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Proposed Amendment	1983 Revised Request
III-4	Office of Attending Physician.....	$3,000	-$3,000	---
	Official mail costs.....25,042,000		13,022,000	38,064,000

LEGISLATIVE BRANCH

ARCHITECT OF THE CAPITOL

LIBRARY BUILDINGS AND GROUNDS

STRUCTURAL AND MECHANICAL CARE

For an additional amount for "Structural and mechanical care", $72,270,000 to remain available until expended: Provided, That appropriations under this head shall hereafter be available for cleaning and repairing works of art without regard to section 3709 of the Revised Statutes, as amended.

LIBRARY OF CONGRESS

FURNITURE AND FURNISHINGS

For an additional amount for "Furniture and furnishings,", $7,700,000, to remain available until expended.

OFFICE OF TECHNOLOGY ASSESSMENT

Salaries and Expenses

For an additional amount for "Salaries and expenses", $245,000.

1984 Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Proposed Amendment	1983 Revised Request
III-24	Salaries and expenses	$346,000	$50,000	$396,000

THE JUDICIARY

Courts of Appeals, District Courts,
and Other Judicial Services

Bankruptcy Courts, Salaries and Expenses

For an additional amount for "Bankruptcy Courts, Salaries and expenses", $750,000.

This proposal would provide funding in 1983 for 160 additional temporary deputy clerks. These positions are required to handle increased caseload of the bankruptcy courts. This proposal would increase 1983 outlays by $626 thousand.

1984 Budget Appendix Page	Heading	1984 Budget Request	1984 Proposed Amendment	1984 Revised Request
I-B5	Salaries of supporting personnel.....	$330,420,000	$3,313,000	$333,733,000
I-B7	Expenses of operation and maintenance of Courts.....	$76,540,000	$2,388,000	$78,928,000
I-B8	Space and facilities.....	$168,490,000	$1,933,000	$170,423,000

These proposals would provide for the addition of 10 full time magistrates and staff, 11 legal assistants to magistrates, a general pay adjustment for part-time magistrates, and 313 additional people to administer the pretrial services program. These proposals would increase 1984 outlays by $7.6 million.

Administrative Office of the United States Courts

I-B10	Salaries and expenses.....	$27,550,000	$75,000	$27,625,000

This proposal would provide resources in 1984 to handle the increased case load of the bankruptcy courts. This proposal would increase 1984 outlays by $75 thousand.

EXECUTIVE OFFICE OF THE PRESIDENT
Office of the United States Trade Representative
Salaries and Expenses

For an additional amount for Salaries and expenses, $136,000.

1984 Budget Appendix Page	Heading	1984 Budget Request Pending	1984 Proposed Amendment	1984 Revised Request
I-C[9]	Salaries and expenses	$11,647,000	$250,000	$11,897,000

These proposals reflect the costs of a new Deputy United States Trade Representative and supporting staff. This action would increase outlays by $133 thousand in 1983 and $248 thousand in 1984.

FUNDS APPROPRIATED TO THE PRESIDENT

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1983 Revised Request
	International Security Assistance			
I-28	Foreign Military Sales Credit	$1,000,000,000	Language	$1,000,000,000
	(In the appropriation language under the above heading delete "$4,436,000,000." and insert in lieu thereof $4,656,000,000.)			

This proposal related to a defense and economic cooperation agreement with Greece would provide funds to help modernize and train Greek military forces, thereby contributing to the security of the NATO alliance. Authorizing legislation for this proposal is being sent to the Congress. This proposal would not increase budget outlays.

FUNDS APPROPRIATED TO THE PRESIDENT
Multilateral Assistance
International Development Assistance

1984 Budget Appendix Page	Heading	1984 Budget Request Pending	1984 Proposed Amendment	1984 Revised Request
1-D9	Contribution to the Asian Development Bank	$154,059,921	$6,288,925	$160,348,846
1-D9	Limitation on callable capital subscriptions		Limitation Increase	
	(In the appropriation language under the above heading delete "$224,518,624" and insert in lieu thereof $251,377,943.)			

This amendment reflects the final negotiated U.S. share of the Bank's latest capital increase. This action would increase outlays by $2.5 million in 1984.

ENERGY ACTIVITIES

General Provisions

SEC. 304. Appropriations made to the Department of Energy by this Act and those appropriations made available to the Department of Energy by Public Law 97-377 shall be available under the same terms and conditions as was provided under the Energy and Water Development Appropriations Act, 1982, Public Law 97-88: Provided, That not to exceed 10 per centum of any appropriations made available for the current fiscal year for Department of Energy activities provided for in Public Law 97-88 may be transferred between such appropriations, but no such appropriation, except as otherwise provided, shall be increased or decreased by more than 10 per centum by any such transfers, and any such proposed transfers shall be submitted promptly to the Committees on Appropriations of the House and Senate.

This language would allow for an increase in the limitation on authority to transfer budget authority between appropriation accounts. Outlays would not be affected.

ENERGY ACTIVITIES

1984 Budget Appendix Page	Heading	1984 Budget Request	1984 Proposed Amendment	1984 Revised Request
I-J27	General Provisions SEC. 108. Revenues received from the sale of any products produced in facilities other than demonstration plants operated as part of Department of Energy programs appropriated under this Act shall be covered into the Treasury as miscellaneous receipts; and (2) revenues and other moneys received by or for the account of the Department of Energy or otherwise generated by sale of products in connection with demonstration plant projects of the Department appropriated under this Act may be retained by the Secretary of Energy, to be available until expended, and used only for plant construction, operation costs, and payments to cost-sharing entities as provided in appropriate cost-sharing contracts or agreements: Provided further, That the remainder of revenues after the making of such payments shall be covered into the Treasury as miscellaneous receipts: Provided further, That any contract, agreement or provision thereof entered into by the Secretary pursuant to	--	General Provision language	--

this authority shall be submitted to the Senate Committee on Appropriations and the House Committee on Appropriations and a period of thirty days shall elapse while Congress is in session (in computing the thirty days, there shall be excluded the days on which either the Senate or the House is not in session because of adjournment for more than three days) before the contract, agreement or provision thereof shall become effective, except that such committees, after having received the proposed contract, agreement or provision thereof, may, by separate resolutions in writing, waive the condition of all or any portion of such thirty-day period.

This request would provide the general authority needed to execute programs funded in the Interior and Related Agencies Appropriations Act. Outlays would not be affected.

Department of Housing and Urban Development

Subsidized Housing Programs

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-L1	Subsidized Housing Programs	$514,708,000	$3,081,153,000	$3,595,861,000
	(Contract Authority)	($408,656,000)	($100,981,000)	($509,637,000)
	(In the appropriation language under the above heading, delete "$408,655,702" and insert in lieu thereof $509,636,806 and delete "$514,708,100" and insert in lieu thereof $3,595,860,896.)			

This proposal reflects the denial of the Administration's proposed deferral of $3.1 billion from 1983 into 1984. The Department requires this new budget authority in 1984 to carry out the President's program. This proposal would have no net affect on 1984 outlays.

DEPARTMENT OF THE INTERIOR
NATIONAL PARK SERVICE

Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-M29	National recreation and preservation	—	Appropriation language	—

(Insert the following appropriation language under the above heading: All unexpended balances in this appropriation shall be merged into the "Operation of the National Park System" appropriation.)

This appropriation language change would authorize the merger of unexpended balances in the National Recreation and Preservation appropriation account into the Operation of the National Park System appropriation account.

DEPARTMENT OF LABOR

EMPLOYMENT AND TRAINING ADMINISTRATION

ADVANCES TO THE UNEMPLOYMENT TRUST FUND AND OTHER FUNDS

For an additional amount for "Advances to the Unemployment Trust Fund and other funds", including nonrepayable advances to the revolving fund established by section 901(e) of the Social Security Act, $615,000,000, to remain available until September 30, 1984.

This supplemental request would provide additional non-repayable advances to the Unemployment Trust Fund for Federal Supplemental Compensation benefit payments, reflecting the extension of that program by Public Law 98-8 (the Jobs Bill), and would provide authorization to make non-repayable advances to the revolving fund for Advances to the Employment Security Administration Account in the Unemployment Trust Fund. Outlays from this account are offset by deductions for offsetting receipts; thus this proposal would not affect budget outlays.

DEPARTMENT OF LABOR

Employment Standards Administration

1984 Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Proposed Amendment	1983 Revised Request
III-17	Black Lung Disability Trust Fund	$54,000,000	$132,000,000	$186,000,000

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-015	Black Lung Disability Trust Fund	$707,000,000	$120,000,000	$827,000,000

These proposals would provide additional funds to pay increased benefit and interest costs under the black lung program. These amendments would increase 1983 outlays by $132 million and 1984 outlays by $120 million.

Motor Carrier Ratemaking Study Commission

Salaries and Expenses

(Including Transfer of Funds)

Of the funds made available under the heading of Department of Transportation, Office of the Secretary, Salaries and Expenses, for Fiscal Year 1983 for the Motor Carrier Ratemaking Study Commission, unobligatd balances available as of September 30, 1983, shall remain available until expended.

This language would make $1 million in annual funds transferred from the Office of the Secretary of Transportation to the Motor Carrier Ratemaking Study Commission in 1983 available until expended. The change would obviate the need to seek a supplemental appropriation in 1984, as the 1983 funds could be carried over. The Commission, which is scheduled to expire in 1984, did not request a 1984 appropriation because it calculated that the carryover from the 1983 transfer would meet its budget needs. The proposal would not affect existing outlay estimates.

DEPARTMENT OF THE TREASURY

Claims Against the United States Customs Service

This proposal would provide funds in 1983 to pay for the adjudication of a claim by a private citizen against the United States Customs Service. The law requires a congressional appropriation for payment of claims of this type.

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MAR 26 1982

Dear Mr. Stockman:

We are requesting a supplemental appropriation of $2,430 to pay a claim against the U.S. Customs Service under the Suits in Admiralty Act (46 U.S.C. 741 et. seq.). Claims under this statute are not covered by the provisions of Section 1302 of the Supplemental Appropriations Act of 1957, as amended, and, therefore, still require a report to Congress and Congressional appropriation for payment.

The claim arises out of a personal injury sustained on July 18, 1980, by Arthur Owens, an electronics consultant, while aboard a Customs Service vessel. While in international waters, the vessel hit a large wave and the claimant grabbed a door frame to avoid being thrown against the deck. The unsecured door slammed shut and severed the claimant's thumb. Owens' claim is for the hospital, rehabilitative and transportation expenses incurred as a result of the accident.

Sincerely,

(SIGNED) [illegible]

Cora P. Beebe
Assistant Secretary
(Administration)

The Honorable
David A. Stockman
Director
Office of Management and Budget
Washington, D.C. 20503

ABB:JHubbard:jh:Mar 25 1982 (A4)

FIS-3-06.4 JHA
AL-81-06-45

OCT 21 1981

Mr. Arthur Owens
3030 S.W. 196 Drive
Miami, Florida 33157

Dear Mr. Owens:

Your claim on Standard Form 95, "Claim for Damage or Injury", dated June 3, 1981, in the amount of $2,430, has been referred to this office for consideration. The claim arises out of the personal injury which you sustained aboard the Miami District Hatteras 53196 on July 19, 1980.

The statute governing this claim is the Suits in Admiralty Act, 46 USC 741 et seq. This law is the exclusive remedy in any suit against the United States arising out of an injury aboard a vessel possessed by the Government in navigable waters. The Suits in Admiralty Act grants to the Secretary of any department or his designee authority to arbitrate, compromise, or settle any claim in which an action will lie under the provisions of the Act.

The United States Customs Service has conducted an investigation into the facts and circumstances of the incident in question. Based on the evidence before us as a result of that investigation, together with the materials submitted by you, we have concluded that payment of your claim should be made in full.

Accordingly, there is enclosed a release on Standard Form 1145 in the amount of $2,430 to be executed by you. The properly executed release should be returned to U.S. Customs Service, Office of Chief Counsel, 1301 Constitution Avenue, NW., Washington, D.C. 20229. Upon receipt of the release, duly executed, payment will be made in due course.

We sincerely regret that this accident occurred.

Sincerely,

/s/ John M. Walker, Jr.

John M. Walker, Jr.
Assistant Secretary
(Enforcement and Operations)

Enclosure

DISTRICT OF COLUMBIA
FEDERAL PAYMENT TO THE DISTRICT OF COLUMBIA

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-V15	Payment for water and sewer services	$22,530,000	-$6,010,000	$16,520,000

This amendment would reduce the payment to the District of Columbia made in lieu of reimbursement for charges for water and sewer services provided to Federal facilities. The revised request is based on water and sewer rate legislation pending before the District Council which contains lower and later rate adjustments than were assumed when the original request was prepared. This proposal would reduce 1984 outlays by $6.0 million.

PANAMA CANAL COMMISSION

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-V106	Operations and Facilities	$453,800,000	Language	$453,800,000
. .	(In the appropriation language under the above heading, delete "$539,383,000" and insert in lieu thereof $453,800,000, and delete the paragraph beginning with "There is hereby appropriated" and ending with "$85,583,000, to remain available until expended.")			

This amendment would provide a technical adjustment by reducing the amount requested to reflect the withdrawal of a reimbursement to the General Fund. The desired reimbursement of $85.6 million will now be made by dissolving the Panama Canal Commission Fund and moving the remaining unappropriated receipts as of September 30, 1983, to the General Fund of the Treasury. This proposal would not affect outlays.

Department of Health and Human Services
National Institutes of Health

1984 Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Amendment	1983 Revised Request
III-26	John H. Fogarty International Center for Advanced Study in the Health Sciences (In the appropriation language under the above heading delete the semi-colon after "$163,000" and insert in lieu thereof, to be derived by transfer from the Rural Development Loan Fund;)	$163,000	$-163,000 and transfer language	---
III-26	National Library of Medicine (In the appropriation language under the above heading delete the semi-colon after "$1,071,000" and insert in lieu thereof, to be derived by transfer from the Rural Development Loan Fund;)	1,071,000	-1,071,000 and transfer language	---

This proposal would provide transfer language to enable these accounts to cover the cost of the October 1982 Federal pay raise. This proposal would not affect outlays.

FARM CREDIT ADMINISTRATION

Limitation on Administrative Expenses

The "Limitation on
administrative expenses"
is increased by $232,000.

This proposal would enable the Farm Credit Administration to meet the cost of the October 1982 Federal pay raise.

Federal Home Loan Bank Board

1984 Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Proposed Amendment	1983 Revised Request
III-27	Limitation administrative and nonadministrative expenses ..... (In the appropriate language under the above heading delete "$1,100,000" and insert in lieu thereof ($900,000.)		Limitation decrease of $200,000	.....

This proposal would reduce the request for a limitation increase to cover the cost of the 1982 Federal pay raise. This reduction is possible because of unanticipated savings due to purchasing rather than leasing word processing equipment.

International Trade Commission

Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Proposed Amendment	1983 Revised Request
III-28	Salaries and expenses	$624,000	$107,000	$731,000

Budget Appendix Page	Heading	1984 Budget Request	1984 Proposed Amendment	1984 Revised Request
I-V70	Salaries and expenses	$21,103,100	$138,000	$21,241,000

These requests would provide funds to cover the increased costs resulting from the 1982 Executive pay raise. These proposals would increase 1983 outlays by $107 thousand and 1984 outlays by $138 thousand.

OFFICE OF PERSONNEL MANAGEMENT

Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Proposed Amendment	1983 Revised Request
III-28	Salaries and Expenses	---	Limitation Increase	---
	(In the appropriation language under the above heading delete "$1,646,000" and insert in lieu thereof $1,675,000)			

This proposal would increase the limitation on administrative expenses to fully provide for the October 1982 Federal pay raise. This proposal would not affect outlays.

Proposals Providing Offsets to Title I of

Public Law 98-8 (the Jobs Bill)

DEPARTMENT OF AGRICULTURE

Forest Service

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-E101	Construction	$242,291,000	-$3,192,000	$239,099,000
	(In the appropriation language under the above heading, delete "$18,459,000" and insert in lieu thereof $15,267,000.)			

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would decrease in 1984 outlays by $1.9 million.

DEPARTMENT OF AGRICULTURE

Soil Conservation Service

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-E71	Watershed and flood prevention operations	$96,593,000	-$50,000,000	$46,593,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $25 million.

DEPARTMENT OF DEFENSE - CIVIL

Corps of Engineers - Civil

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-82	Construction general	$905,700,000	-$85,000,000	$820,700,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would not affect 1984 outlays.

EDUCATION ACTIVITIES

Office of Elementary and Secondary Education

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-I2	Impact aid	$465,000,000	-$10,000,000	$455,000,000

This proposal eliminates the request for impact aid construction authorized by the Act of September 23, 1950, as amended, and reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $1 million.

EDUCATION ACTIVITIES

Offices of Special Education and Rehabilitative Services

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-17	Rehabilitation Services and Handicapped Research	$1,036,727,000*	-$5,000,000	$1,031,727,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $800 thousand.

* Proposed for later transmittal, proposed legislation.

EDUCATION ACTIVITIES

Office of Postsecondary Education

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-I10	Student Financial Assistance	$2,713,800,000*	-$50,000,000	$2,663,800,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $2.5 million.

* Proposed for later transmittal, proposed legislation.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-K10	Disease control	$270,023,000	-$15,600,000	$254,423,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $8.4 million.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Human Development Services

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-K45	Social Services Block Grant (In the appropriation language under the above heading delete "$2,500,000,000" and insert in lieu thereof $2,440,000,000. State allotments pursuant to Sections 2002 and 2003 of the Social Security Act shall be reduced on a pro-rata basis).	$2,500,000,000	-$60,000,000	$2,440,000,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $58 million.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Assistant Secretary for Health

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-K26	Grants to States for Health	$1,361,729,000	-$100,000,000	$1,261,729,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $70 million.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
FOOD AND DRUG ADMINISTRATION

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-K1	Program expenses	$385,933,000	-$875,000	$385,058,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $140 thousand.

DEPARTMENT OF THE INTERIOR

Bureau of Reclamation

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-M14	Operation and Maintenance	$145,091,000	-$11,000,000	$134,091,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $10 million.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-M51	Construction	$55,875,000	$14,550,000	$41,325,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $1 million.

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-N49	Operation of Indian Programs	$841,515,000	-$5,000,000	$836,515,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $5 million.

DEPARTMENT OF JUSTICE

Legal Activities

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-N8	Support of United States Prisoners (In the appropriation language under the above heading delete all of the material beginning with "Not to exceed".)	$44,768,000	Language	$44,768,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would not affect outlays.

DEPARTMENT OF JUSTICE

Federal Prison System

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-H19	Buildings and facilities	$97,142,000	-$54,000,000	$43,142,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $13.5 million.

DEPARTMENT OF JUSTICE

Interagency Law Enforcement

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-N10	Organized crime drug enforcement	$105,949,000	-$16,000,000	$89,949,000
	(In the appropriation language under the above heading delete "of which $6,000,000 for construction of new facilities and construction, remodeling and equipping buildings and facilities at existing detention and correctional institutions and", delete "are to remain" and insert in lieu thereof "is to remain".)			

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $9 million.

DEPARTMENT OF LABOR

Training and Employment Administrtion

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-02	Training and employment services	$3,643,330,000	-$49,400,000	$3,593,930,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit.) This proposal would reduce 1984 outlays by $39.7 million.

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-Q20	Grants to the National Railroad Passenger Corporation	$682,000,000	-$20,000,000	$662,000,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $20 million.

DEPARTMENT OF THE TREASURY

United States Customs Service

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-R14	Salaries and expenses	$578,749,000	-$3,750,000	$574,999,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $3.8 million.

VETERANS ADMINISTRATION

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-U6	Medical care	$8,078,526,000	-$20,000,000	$8,058,526,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $15 million.

GENERAL SERVICES ADMINISTRATION

PUBLIC BUILDING SERVICE

1984 Budget Appendix Page	Heading	1984 Request	1984 Amendment Proposed	1984 Revised Request
I-V43	Federal Buildings Fund Limitations on Availability of Revenue.....		Limitation decrease of $125,000,000	

(In the appropriation language under the above heading delete "$2,148,143,000" wherever it appears and insert in lieu thereof $2,023,143,000, delete "$199,662,000" and insert in lieu thereof $74,662,000, insert

"Provided further, That $125,000,000 shall be transferred to the Treasury of the United States,"

immediately after "available from such revenues and collections:" delete the following,

"California:
San Francisco, Appraisers Stores, $10,051,000"

"Colorado:
Denver, Denver Federal Center, Building #20, $6,427,000"

"Georgia:
Atlanta, Federal Annex, $9,193,000"

"Maryland:
Suitland, Naval Intelligence Command, Building #1, $9,760,000

"New York:
New York, Federal Office Building, 252 Seventh Avenue, $2,579,000"

GENERAL SERVICES ADMINISTRATION

PUBLIC BUILDING SERVICE

1984 Budget Appendix Page	Heading	1984 Request	1984 Amendment Proposed	1984 Revised Request
	"Pennsylvania: Pittsburgh, Post Office and Courthouse, $8,974,900"			
	and insert in lieu thereof the following:			
	Maryland: Suitland, Naval Intelligence Command, Building #1, $643,000			
	New York: New York, Federal Office Building, 252 Seventh Avenue, $579,000.)			

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $81 million.

TENNESSEE VALLEY AUTHORITY

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-W134	Tennessee Valley Authority Fund	$883,471,000	-$14,000,000	$869,471,000

This proposal reflects the President's policy of offsetting in later years the 1983 appropriation increases provided by Title I of Public Law 98-8 (the Jobs Bill) that were accelerations of planned future activity. The President's objective is to minimize the impact of the jobs initiative on the multi-year deficit. This proposal would reduce 1984 outlays by $12.6 million.

○

98th Congress, 1st Session - - - - - - - House Document No. 98–51

DEFERRALS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A REPORT ON FOUR NEW DEFERRALS OF BUDGET AUTHORITY FOR FISCAL YEAR 1983, AND ONE REVISION TO A PREVIOUSLY REPORTED DEFERRAL OF BUDGET AUTHORITY, PURSUANT TO SECTIONS 1013(a) AND 1014(c) OF PUBLIC LAW 93–344

APRIL 21, 1983.—Message and accompanying papers referred to the Committee on Appropriations and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

11-011 O WASHINGTON: 1983

To the Congress of the United States:

In accordance with the Impoundment Control Act of 1974, I herewith report four new deferrals of budget authority totaling $31,441,000 and one revision to a previously reported deferral, increasing the amount deferred by $6,000,000.

The deferrals affect the Department of Commerce and the Department of Energy.

The details of each deferral are contained in the attached reports.

RONALD REAGAN.

THE WHITE HOUSE, *April 21, 1983.*

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

Deferral #	Item	Budget Authority
	Department of Commerce	
	National Oceanic and Atmospheric Administration	
D83-71	Operations, research and facilities.....	2,965
	Energy Activities	
	Energy Programs	
	Energy supply, R&D activities (operating expenses).....	15,226
D83-72	Fossil energy research and development.....	8,750
D83-73	Fossil energy construction.....	26,000
D83-49A	Energy conservation.....	4,500
D83-74	Total, deferrals.....	57,441

****

SUMMARY OF SPECIAL MESSAGES
FOR FY 1983
(in thousands of dollars)

	Rescissions	Deferrals
Seventh special message		
New items.....	---	31,441
Change to amounts previously submitted.....	---	6,000
Effects of Seventh special message..	---	37,441
Amounts previously submitted that were changed by this message.....	---	20,000
Total, rescissions and deferrals....	---	57,441
Amounts previously submitted that were not changed by this message..	1,554,015 1/	13,396,734
Total amount proposed to date in all special messages.....	1,554,015 1/	13,454,175 2/

1/ This amount includes $23,400,000 in current budget authority for the rural telephone bank that is offset by a corresponding increase in permanent budget authority (R83-20).

2/ All amounts listed represent budget authority except for $15,944,000 of outlays only in one general revenue sharing deferral (D83-16B).

Deferral No: D83-71

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Department of Commerce	New budget authority (P.L. 97-377) $885,654,000
Bureau National Oceanic and Atmospheric Administration	Other budgetary resources 143,054,883
Appropriation title & symbol: Operations, Research, and Facilities 13X1450	Total budgetary resources 1,028,708,883
	Amount to be deferred: Part of year ____ Entire year 2,965,000
OMB identification code: 13-1450-0-1-306	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ☐ Other ____
Grant program ☒ Yes ☐ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: This account provides for the research, development, and support of operating programs, and acquisition of the facilities for fulfilling the basic responsibilities of the National Oceanic and Atmospheric Administration (NOAA). The General Accounting Office (GAO) conducted a review of NOAA's computer procurement actions at the request of the Chairman of the House committee on Government Operations. As a result of GAO recommendations in their report (GAO/CED-82-81, April 28, 1982) NOAA has reassessed its computer requirements for FY 1983-85 and identified $2,965,000 that will not be needed for computer procurement in FY 1983. These funds are being deferred for the remainder of FY 1983 and will be used to offset other funding needs for this account in FY 1984. This deferral action is taken under the provisions of the Antideficiency Act, due to the change in computer requirements.

Estimated Effects: This deferral action will have no impact on the program.

Outlay Effect: This deferral action will shift $2,965,000 in outlays from FY 1983 to FY 1984.

Deferral No: D83-72

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency: Energy Activities	New budget authority (P.L. 97-377): $2,071,016,000
Bureau: Energy Programs	Other budgetary resources: 393,890,722
Appropriation title & symbol: Energy supply, research and development activities (Operating Expenses) 89X0224 1/	Total budgetary resources: 2,464,906,722
	Amount to be deferred: Part of year: ____ Entire year: 15,226,000
OMB identification code: 89-0224-0-1-271	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other ____
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year ____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other ____

Justification: The Energy Supply Research and Development account provides support for research and development of a variety of new energy technologies. This deferral action consists of two parts: (1) it defers $10,226,000 in funds which are in excess of the Department's 1983 financial operating plan as approved by the House Appropriations Committee by letter of February 11, 1983, and (2) it defers $5,000.000 to avoid initiation of two new demonstration projects, the Second Small Community experiment and the Salton Sea Solar Pond Project, for which there is near-term commercial interest and for which the option of private sector funding exists, or where previous DOE funded efforts have lessened technical risks. The Department will continue to support research of a longer term, generic nature for which there is no present commercial interest.

Estimated Effects: This deferral action will allow for an orderly transition to a more generic and long term research program.

Outlay Effect: This deferral action shifts $10,000,000 in FY 1983 outlays into FY 1984 and $5,226,000 from FY 1984 to FY 1985.

1/ This account was the subject of a deferral in FY 1982 (D82-228A).

Deferral No: D83-72

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Agency Energy Activities	New budget authority (P.L. 97-377) 97-394 (P.L.) 7,000,000 215,514,000
Bureau: Energy Programs	Other budgetary resources 136,637,249
Appropriation title & symbol: Fossil Energy Research and Development 89X0213 1/	Total budgetary resources 354,151,249
	Amount to be deferred: Part of year 8,750,000 Entire year
OMB identification code: 89-213-0-1-271	Legal authority (in addition to sec. 1013): ☐ Antideficiency Act ☐ Other
Grant program: ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Fossil Energy Research and Development Program conducts research and development in the areas of coal, petroleum and gas. The program is continuing to focus on generic and technology base research where private sector involvement and commitment is unlikely. This deferral action is being taken for several reasons: (1) $4.50 million is deferred because the funds are in excess of that required to carry out planned program requirements in the areas of peat research, fluidized-bed coal gasification and uncoventional gas recovery from eastern gas shales; (2) $1.25 million is deferred to avoid initiation of a coal-fired combined cycle gas turbine cogeneration facility, which has already been demonstrated; and (3) $3.00 million is deferred in the MHD program, which is the amount in excess of funds required to terminate the project. (The Department notified Congress of its proposal to terminate the MHD program by letter from the Secretary of Energy on March 31, 1983).

Estimated Effects: This deferral action will allow for an orderly transition to a more generic and long term research program.

Outlay Effect: This deferral action will shift $6,000,000 in outlays from FY 1983 to FY 1984, and $2,750,000 from FY 1984 to FY 1985.

1/ This account is the subject of another FY 1983 deferral (D83-8A).

D83-49A

SUPPLEMENTARY REPORT

Report Pursuant to Section 1014(c) of P.L. 93-344

This report updates Deferral No. D83-49, transmitted to the Congress on February 1, 1983.

This revision to a deferral of fossil energy construction funds in the Department of Energy increases the amount previously reported as deferred from $20,000,000 to $36,000,000. The increase of $6,000,000 is due to a decision not to fund certain additional near term development and demonstration activities.

Deferral No: D83-49A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

Agency: Energy Activities	New budget authority (P.L. _____) $ _____
Bureau: Energy Programs	Other budgetary resources 51,041,891
Appropriation title & symbol: Fossil Energy Construction 1/ 89X0214	Total budgetary resources 51,041,891
	Amount to be deferred: Part of year $ _____
	Entire year 26,000,000*
OMB identification code: 89-0214-0-1-271	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act ($20,000,000) ☐ Other _____
Grant program ☐ Yes ☒ No	
Type of account or fund: ☐ Annual ☐ Multiple-year _____ (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other _____

Justification: The Fossil Energy Program conducts research and development in the areas of coal, petroleum and gas. Development and demonstration of near term technologies supported in the past by this program are no longer funded by the Federal government. This reorientation permits the deferral of excess funds for the entire year resulting in a reduction in the FY 1984 appropriation request. This deferral action is taken under provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Effects: This deferral action has no programmatic effect.

Outlay Effect:* This deferral action will shift $26,000,000 in outlays from FY 1983 into FY 1984.

1/ This account was the subject of a deferral in FY 1982 (D82-9).

* Revised from previous report.

Deferral No: D83-74

DEFERRAL OF BUDGET AUTHORITY

Report Pursuant to Section 1013 of P.L. 93-344

Energy Activities Energy Programs	New budget authority (P.L. 97-394) $ 279,290,000 Other budgetary resources 135,277,747 Total budgetary resources 414,567,747
priation title & symbol Energy Conservation - 89X0215	Amount to be deferred: Part of year Entire year 4,500,000
dentification code: 89-0215-0-1-272	Legal authority (in addition to sec. 1013): ☒ Antideficiency Act $1,500,000 ☐ Other
program ☒ Yes ☐ No	
of account or fund: ☐ Annual ☐ Multiple-year (expiration date) ☒ No-year	Type of budget authority: ☒ Appropriation ☐ Contract authority ☐ Other

Justification: The Energy Conservation program funds research and development on long-term, high risk, high payoff energy conservation technologies. The program also provides State and local grants for energy conservation.

This action defers $3,000,000 from the consumer product technology program and $1,500,000 for the National Appropriate Technology Assistant Service (NATAS), for a total deferral of $4,500,000 for the remainder of the fiscal year.

The consumer product technology deferral reflects the continuing redirection of the program toward long-term, generic high-risk, but potentially high-pay-off research and development. Funds for projects inconsistent with this policy, and/or of low priority, are being deferred.

Deferral of the NATAS funds will provide time for a more complete examination of the results of the Appropriate Technology Program and of the need for a NATAS. Should it become apparent that such a technical assistance service is important, reconsideration of the establishment of the NATAS, and of the best organization to place it into effective operation, can be undertaken at that time.

Estimated Effects: The deferral of $3,000,000 from the Consumer Product Technology program will delay work on selected projects inconsistent with Administration policy or of low priority. However, the rest of this program will continue on schedule in FY 1983. The $1,500,000 deferral for NATAS will delay initiation of this service while its need is being examined.

Outlay Effect: This deferral action will shift $4,500,000 in outlays from FY 1983 to FY 1984.

98th Congress, 1st Session - - - - - - House Document No. 98–52

RULES OF BANKRUPTCY PROCEDURE

COMMUNICATION

FROM

THE CHIEF JUSTICE OF THE UNITED STATES

TRANSMITTING

RULES GOVERNING PRACTICE AND PROCEDURE IN BANKRUPTCY CASES UNDER TITLE 11, UNITED STATES CODE, ADOPTED BY THE SUPREME COURT PURSUANT TO TITLE 28, UNITED STATES CODE, SECTION 2075, TOGETHER WITH THE REPORT OF THE JUDICIAL CONFERENCE OF THE UNITED STATES SUBMITTED TO THE COURT PURSUANT TO 28 U.S.C. 331

APRIL 26, 1983.—Referred to the Committee on the Judiciary and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
19-716 O WASHINGTON: 1983

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RULES OF BANKRUPTCY PROCEDURE

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SUPREME COURT OF THE UNITED STATES,
Washington, D.C., April 25, 1983.

Hon. THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives,
Washington, D.C.

To the Senate and House of Representatives of the United States of America in Congress assembled:

By direction of the Supreme Court of the United States, I have the honor to submit to the Congress rules to govern the practice and procedure in bankruptcy cases under Title 11, United States Code, which have been adopted by the Supreme Court pursuant to Title 28, United States Code, Section 2075.

These rules were previously submitted to the Court for its consideration by the Judicial Conference of the United States under the authority granted by Section 331 of Title 28, United States Code. Accompanying these new rules is an excerpt from the Report of the Judicial Conference of the United States, which contains Advisory Committee Notes and official forms approved by the Conference.

Respectfully,

WARREN E. BURGER.

SUPREME COURT OF THE UNITED STATES

April 25, 1983

ORDERED:

1. That the rules of procedure in bankruptcy cases, recommended by the Judicial Conference of the United States, and to be known as the Bankruptcy Rules, be, and they hereby are, prescribed pursuant to Section 2075, Title 28, United States Code, to govern the practice and procedure in cases under Title 11, United States Code, as hereinafter set forth:

[See infra., pp. ____ ____ ____.]

2. That the aforementioned Bankruptcy Rules shall take effect on August 1, 1983, and shall be applicable to proceedings then pending, except to the extent that in the opinion of the court their application in a pending proceeding would not be feasible or would work injustice, in which event the former procedure applies.

3. That the Bankruptcy Rules, heretofore prescribed by this Court, be, and they hereby are, superseded by the new rules, effective August 1, 1983.

4. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit these new Bankruptcy Rules to the Congress in accordance with the provisions of Section 2075 of Title 28, United States Code.

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BANKRUPTCY RULES

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RULES OF PRACTICE AND PROCEDURE IN BANKRUPTCY

Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in United States Bankruptcy Courts in cases under chapters 7, 9, 11 and 13 of title 11 of the United States Code. The rules shall be cited as the Bankruptcy Rules and the forms as the Official Bankruptcy Forms. These rules shall be construed to secure the expeditious and economical administration of every case under the Code and the just, speedy, and inexpensive determination of every proceeding therein.

PART I

COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF

Rule 1002. Voluntary Petition

(a) COMMENCEMENT. A debtor's petition commencing a voluntary case shall be filed with the bankruptcy court and shall conform substantially to Official Form No. 1.

(b) NUMBER OF COPIES.

(1) Chapter 7 Liquidation and Chapter 13 Adjustment of Debts of an Individual with Regular Income. An original and one copy of a petition requesting relief under chapter 7 or chapter 13 of the Code shall be filed, but additional copies may be required by local rule. If a stockbroker's petition for relief under subchapter III of chapter 7 is filed, an additional copy shall be filed and transmitted by the clerk to the Securities Investor Protection Corporation. If a commodity broker's petition for relief under subchapter IV of chapter 7 is filed, an additional copy shall be filed and transmitted by the clerk to the Commodity Futures Trading Commission.

(2) Chapter 9 Adjustment of Debts of a Municipality and Chapter 11 Reorganization. An original and five copies of a petition requesting relief under chapter 9 or chapter 11 of the Code shall be filed, but additional copies may be required by local rule. The clerk shall transmit one copy to the District Director of Internal Revenue for the district in which the case is filed, one copy of a chapter 9 petition to the Secretary of State of the state in which the debtor is located, two copies of a chapter 9 petition to the Securities and Exchange Commission

and, if the debtor is a corporation, two copies of a chapter 11 petition to the Securities and Exchange Commission. If the petition requests relief for the reorganization of a railroad under subchapter IV of chapter 11 of the Code, two additional copies of the petition shall be filed, and the clerk shall transmit one copy to the Interstate Commerce Commission and one copy to the Secretary of Transportation.

Rule 1003. Involuntary Petition; Case Ancillary to Foreign Proceeding

(a) COMMENCEMENT. A petition commencing an involuntary case shall be filed with the bankruptcy court and shall conform substantially to Official Form No. 11.

(b) NUMBER OF COPIES. The number and distribution of copies shall be as specified in Rule 1002.

(c) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. A person who has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

(d) JOINDER OF PETITIONERS AFTER FILING. If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in § 303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

(e) CASE ANCILLARY TO FOREIGN PROCEEDING.

(1) Petition; Number of Copies. An original and one copy of a petition commencing a case ancillary to a foreign proceeding shall be filed with the bankruptcy court.

(2) Service of Petition and Summons. On the filing of a petition pursuant to the preceding paragraph, the clerk shall forthwith issue a summons for service on all parties against whom relief is sought pursuant to § 304(b) of the Code and on such other parties as the court may direct. Rule 1010 applies to the manner of service of the summons and petition.

(3) Responsive Pleadings and Motions. Rule 1011(a), (b), (c) and (e) applies to responsive pleadings and motions.

(4) Contested Petition. Rule 1018 applies when a petition filed under this rule is contested.

Rule 1004. Partnership Petition

(a) VOLUNTARY PETITION. A voluntary petition may be filed on behalf of the partnership by one or more general partners if all general partners consent to the petition.

(b) INVOLUNTARY PETITION; NOTICE AND SUMMONS. After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall cause forthwith a copy of the petition to be sent to or served on each general partner who is not a petitioner; and (2) the clerk shall issue forthwith a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

Rule 1005. Caption of Petition

The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the name, social security number and employer's tax identification number of the debtor and all other names used by the debtor within six years before filing the petition. If the petition is not filed by the debtor, it shall include all names known to petitioners used by the debtor.

Rule 1006. Filing Fee

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the prescribed filing fee except as provided in subdivision (b) of this rule.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) Application for Permission to Pay Filing Fee in Installments. A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that he is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) Action on Application. Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates thereof. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) Postponement of Attorney's Fees. The filing fee must be paid in full before the debtor may pay an attorney for services in connection with the case.

Rule 1007. Lists, Schedules and Statements; Time Limits

(a) LIST OF CREDITORS AND EQUITY SECURITY HOLDERS.

(1) Voluntary Case. In a voluntary case, the debtor shall file with the petition a list containing the name and address of each creditor unless the petition is accompanied by a schedule of liabilities or a Chapter 13 Statement.

(2) Involuntary Case. In an involuntary case, the debtor shall file within 15 days after entry of the order for relief, a list containing the name and address of each creditor unless a schedule of liabilities has been filed.

(3) Equity Security Holders. In a chapter 11 reorganization case, a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder, shall be filed by the debtor within 15 days after entry of the order for relief unless the court orders otherwise.

(4) Extension of Time. Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to any trustee, committee appointed under the Code, or other party as the court may direct.

(b) SCHEDULES AND STATEMENTS REQUIRED. The debtor in a chapter 7 liquidation case or chapter 11 reorganization case shall file with the court schedules of assets and liabilities, a statement of financial affairs, and a statement of executory contracts, prepared as prescribed by Official Forms No. 6 and either No. 7 or No. 8, whichever is appropriate, unless the court orders otherwise. The debtor in a chapter 13 individual's debt adjustment

case shall file with the court a Chapter 13 Statement conforming to Official Form No. 10 and, if the debtor is engaged in business, a statement of financial affairs prepared as prescribed by Official Form No. 8.

(c) TIME LIMITS. The schedule and statements, if not previously filed in a pending case, shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e) and (h) of this rule. In an involuntary case the schedules and statements shall be filed by the debtor within 15 days after entry of the order for relief. In a case converted from chapter 11 or chapter 13 to a chapter 7 case, the list of all the debtor's creditors, a schedule of assets and liabilities, a statement of financial affairs and a statement of executory contracts shall be filed by the debtor or other person directed by the court, within 15 days after the entry of the order of conversion. Any extension of time for the filing of the schedules and statements may be granted only on motion for cause shown and on notice to any committee, trustee, examiner or other party as the court may direct.

(d) LIST OF 20 LARGEST CREDITORS IN CHAPTER 9 MUNICIPALITY CASE OR CHAPTER 11 REORGANIZATION CASE. In addition to the list required by subdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by Official Form No. 9. In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within 2 days after entry of the order for relief under § 303(h) of the Code.

(e) LIST IN CHAPTER 9 MUNICIPALITY CASES. The list required by subdivision (a) of this rule shall be filed by the debtor in a chapter 9 municipality case within such time as the court shall fix. If a proposed plan requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, the debtor shall also file with the court a list showing the name and address of each known holder of title, legal or equitable, to real property adversely affected. On motion for cause shown, the court may modify the requirements of this subdivision and subdivision (a) of this rule.

(f) NUMBER OF COPIES. The number of copies of the schedules, statements and lists shall correspond to the number of copies of the petition required by Rules 1002 and 1003.

(g) PARTNERSHIP AND PARTNERS. The general partners of a debtor partnership shall prepare and file the schedules of the assets and liabilities, statement of financial affairs, and statement of executory contracts of the partnership. The court may order any general partner to file a statement of personal assets and liabilities with the court within such time as the court may fix.

(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. Within ten days after the information comes to the debtor's knowledge or within such further time as the court may allow, the debtor in a chapter 7 liquidation case, chapter 11 reorganization case, or chapter 13 individual debt adjustment case shall file a supplemental schedule with respect to any property that the debtor acquires or becomes entitled to acquire within 180 days after the date of the filing of the petition (1) by bequest, devise or inheritance; (2) as a result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or (3) as a beneficiary of a life insurance policy or of a death benefit plan. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance with this subdivision continues notwithstanding the closing of the case before the duty is or can be performed, except that the schedule need not be filed in a chapter 11 or chapter 13 case with respect to property acquired after entry of the order confirming the plan.

(i) DISCLOSURE OF LIST OF SECURITY HOLDERS. After notice and hearing and for cause shown, the court may direct an entity other than the debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and security held by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying, or otherwise disclose the information contained on the list.

(j) IMPOUNDING OF LISTS. On motion of a party in interest and for cause shown the court may direct the impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.

(k) PREPARATION OF LIST, SCHEDULES, OR STATEMENTS ON DEFAULT OF DEBTOR. If a list, schedule, or statement is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or other party to prepare and file any of these papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense.

Rule 1008. Verification of Petitions and Accompanying Papers

All petitions, lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.

Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements of Financial Affairs

A voluntary petition, list, schedule, statement of financial affairs, statement of executory contracts, or Chapter 13 Statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, the court may order any voluntary petition, list, schedule, statement of financial affairs, statement of executory contracts, or Chapter 13 Statement to be amended and the clerk shall give notice of the amendment to entities designated by the court. The amendment shall be filed in the same number as required of the original.

Rule 1010. Service of Involuntary Petition and Summons

On the filing of an involuntary petition, the clerk shall issue forthwith a summons for service on the debtor. The summons shall conform to Official Form No. 13 and a copy shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order the summons and petition to be served by mailing copies to the debtor's last known address, and by at least one publication in the manner and form directed by the court. The summons and petition may be served on the debtor anywhere. Rule 7004(f) and Rule 4(g) and (h) F. R. Civ. P. apply when service is made or attempted under this rule.

Rule 1011. Responsive Pleading or Motion in Involuntary Cases

(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004(b), a nonpetitioning general partner, or alleged general partner, may contest the petition.

(b) DEFENSES AND OBJECTIONS; WHEN PRESENTED. Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F.R. Civ. P. and shall be filed and served within 20 days after service of summons, except that if service is made by publication on a debtor or partner not residing or found within the state in which the bankruptcy court sits, the court shall prescribe the time for filing and serving the response.

(c) EFFECT OF MOTION. Service of a motion under Rule 12(b) F.R. Civ. P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F. R. Civ. P.

(d) CLAIMS AGAINST PETITIONERS. A claim against a petitioning creditor may not be asserted in the answer except for the purpose of defeating the petition.

(e) OTHER PLEADINGS. No other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service.

Rule 1012. Examination of Debtor, Including Discovery, on Issue of Nonpayment of Debts in Involuntary Cases

(a) DISCOVERY. When a petition commencing an involuntary case under § 303 of the Code alleges that the debtor is generally not paying its debts as they become due, and the debtor denies the allegation, discovery may be in accordance with Rules 26-37, F.R. Civ. P.

(b) SANCTIONS. If the debtor fails to appear, produce records, or submit to examination or deposition, the court may enter an order for relief or other appropriate order, in addition to the sanctions available under Rule 37 F.R. Civ. P.

(c) OTHER PROCEDURES. The examination or discovery provided in this rule does not preclude the procedures available under Rule 2004.

Rule 1013. Hearing and Disposition of Petition in Involuntary Cases

(a) CONTESTED PETITION. The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter other appropriate orders.

(b) DEFAULT. If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief prayed for in the petition.

(c) ORDER FOR RELIEF. An order for relief shall conform substantially to Official Form No. 14.

Rule 1014. Change of Venue

(a) TRANSFER OF CASES.

(1) Cases Filed in Proper District. If a petition is filed in a proper district, on timely motion of a party in interest, and after hearing on notice to the petitioners and to other persons as directed by the court, the case may be transferred to any other district if the court determines that the transfer is for the convenience of the parties and witnesses in the interest of justice.

(2) Cases Filed in Improper District. If a petition is filed in an improper district, on timely motion of a party in interest and after hearing on notice to the petitioners and to other persons as directed by the court, the case may be retained or transferred to any other district if the court determines that the retention or transfer is for the convenience of the parties and witnesses in the interest of justice. Notwithstanding the foregoing, if no objection is raised, the court may, without a hearing, retain a case filed in an improper district.

(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If petitions commencing cases under the Code are filed in different districts by or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the court in which the first petition is filed and after hearing on notice to the petitioners and other persons as directed by the court, the court may determine, for the convenience of the parties and witnesses, in the interest of justice the court or courts in which the case or cases should proceed. Except as otherwise ordered by the court in which the first petition is filed, the proceedings on the other petitions shall be stayed by the courts in which the petitions have been filed until the determination is made. The courts in which petitions have been filed shall act in accordance with the determination.

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

(a) CASES INVOLVING SAME DEBTOR. If two or more petitions are pending in the same court by or against the same debtor, the court may order consolidation of the cases.

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest.

(c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

Rule 1016. Death or Insanity of Debtor

Death or insanity of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or insanity had not occurred. If a reorganization or individual's debt adjustment case is pending under chapter 11 or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or insanity had not occurred.

Rule 1017. Dismissal of Case; Suspension

(a) VOLUNTARY DISMISSAL; DISMISSAL FOR WANT OF PROSECUTION. Except as provided in § 1307(b) of the Code, a petition shall not be dismissed on motion of the petitioner or for want of prosecution or other cause or by consent of the parties prior to a hearing on notice to all creditors as provided in Rule 2002(a). For such notice, the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other person.

(b) DISMISSAL FOR FAILURE TO PAY FILING FEE.

(1) For failure to pay any installment of the filing fee the court may dismiss the petition after hearing on notice to the debtor and the trustee.

(2) If the petition is dismissed or the case closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.

(3) Notice of dismissal for failure to pay the filing fee shall be given within 30 days after the dismissal to creditors appearing on the list of creditors and to those who have filed claims, in the manner provided in Rule 2002.

(c) SUSPENSION. A petition shall not be dismissed or proceedings suspended pursuant to § 305 of the Code prior to a hearing on notice as provided in Rule 2002(a).

(d) PROCEDURE FOR DISMISSAL OR CONVERSION. A proceeding to dismiss a case or convert a case to another chapter is governed by Rule 9014.

Rule 1018. Contested Involuntary Petitions; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

The following rules in Part VII apply in all proceedings relating to a contested involuntary petition and in all proceedings to vacate an order for relief: Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-7037, 7052, 7054, 7056, and 7062, except as otherwise provided in Part I of these rules and unless the court otherwise directs. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings relating to a contested involuntary petition, or contested ancillary petition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

Rule 1019. Conversion of Chapter 11 Reorganization Case or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

When a chapter 11 or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) Filing of Lists, Inventories, Schedules, Statements. Lists, inventories, schedules, statements of financial affairs, and statements of executory contracts theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

(2) Notice of Order of Conversion. Within 20 days after entry of the order converting the case to a chapter 7 case, notice of the order shall be given to all creditors in the manner provided by Rule 2002 and shall be included in the notice of the meeting of creditors.

(3) Reconversion to Chapter 7. When a chapter 7 case had been converted to a chapter 11 or chapter 13 case and thereafter reconverted to a chapter 7 case, if the time for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt expired in the original chapter 7 case, the time shall not be revived or extended except as provided in Rule 4004 or 4007.

(4) Claims Filed in Superseded Case. All claims filed in the superseded case shall be deemed filed in the chapter 7 case.

(5) Turnover of Records and Property. After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11 or chapter 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in his possession or control.

(6) Filing Final Report and Schedule of Postpetition Debts. Each debtor in possession or trustee in the superseded case shall file with the court a final report and account within 30 days following the entry of the order of conversion, unless the court directs otherwise. The report shall include a schedule of unpaid debts incurred after commencement of the chapter 11 or chapter 13 case. If the conversion order is entered after confirmation of a plan, the debtor shall file with the court (A) a schedule of property not listed in the final report and account acquired after the filing of the original petition but before entry of the conversion order; (B) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before entry of the conversion order; and (C) a schedule of executory contracts entered into or assumed after the filing of the original petition but before entry of the conversion order.

(7) Filing of Postpetition Claims; Notice. On the filing of the schedule of unpaid debts, the court shall order that written notice be

given to those entities, including the United States, any state, or any subdivision thereof, that their claims may be filed within 60 days from the entry of the order, pursuant to Rule 3001(a)-(d). The court shall fix the time for filing claims arising from debts not so scheduled or arising from rejection of executory contracts under §§ 348(c) and 365(d) of the Code.

(8) Extension of Time to File Claims Against Surplus. Any extension of time for the filing of claims against a surplus granted pursuant to Rule 3002(c)(6), shall apply to holders of claims who failed to file their claims within the time prescribed, or fixed by the court pursuant to paragraph (7) of this rule, and notice shall be given as provided in Rule 2002.

PART II

OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case

(a) APPOINTMENT. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may appoint an interim trustee under § 303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors and other parties in interest as the court may designate.

(b) BOND OF MOVANT. An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under § 303(i) of the Code.

(c) ORDER OF APPOINTMENT. The order appointing the interim trustee shall state why the appointment is necessary and shall specify the trustee's duties.

(d) TURNOVER AND REPORT. Following qualification of the trustee selected under § 702 of the Code, the interim trustee, unless otherwise ordered, shall (1) forthwith turn over to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.

Rule 2002. Notices to Creditors, Equity Security Holders, and United States

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i) and (k) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 20 days notice by mail of (1) the meeting of creditors pursuant to § 341 of the Code; (2) a proposed use, sale, or lease of property other than in the ordinary course of business unless the court for cause shown shortens the time or directs another method of giving notice; (3) the hearing on approval of a compromise or settlement of a controversy, unless the court for cause shown directs that notice not be sent; (4) the date fixed for the filing of claims against a surplus in an estate as provided in Rule 3002(c)(6); (5) in a chapter 7 liquidation and a chapter 11 reorganization case, the hearing on the dismissal or conversion of a case to another chapter; (6) the time fixed to accept or reject a proposed modification of a plan; (7) hearings on all applications for compensation or reimbursement of expenses totalling in excess of $100; and (8) the time fixed for filing proofs of claims pursuant to Rule 3003(c).

(b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i) and (k) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of (1) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; and (2) the time fixed for filing objections to and the hearing to consider confirmation of a plan.

(c) CONTENT OF NOTICE.

(1) Proposed Use, Sale, or Lease of Property. Subject to Rule 6004 the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property.

(2) Notice of Hearing on Compensation. The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(7) of this rule shall identify the applicant and the amounts requested.

(d) NOTICE TO EQUITY SECURITY HOLDERS. In a chapter 11 reorganization case, unless otherwise ordered by the court, the clerk, or some other person as the court may direct, shall in the

manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders ordered by the court pursuant to § 341 of the Code; (3) the hearing on the dismissal or conversion of a case to another chapter; (4) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (5) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (6) the time fixed to accept or reject a proposed modification of a plan.

(e) NOTICE OF NO DIVIDEND. In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

(f) OTHER NOTICES. Except as provided in subdivision (k) of this rule, the clerk shall give the debtor, all creditors and indenture trustees notice by mail of (1) the order for relief; (2) dismissal of the case; (3) the time allowed for filing claims pursuant to Rule 3002; (4) the entry of an order directing that the case be converted to a case under a different chapter; (5) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004; (6) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007; (7) the order of discharge as provided in Rule 4004(g); (8) the waiver denial, or revocation of a discharge as provided in Rule 4006; (9) entry of an order confirming a chapter 9 or 11 plan; and (10) a summary of the trustee's final report and account in a chapter 7 case if the net proceeds realized exceed $250. Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

(g) ADDRESSES OF NOTICES. All notices required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as he or his authorized agent may direct in a request filed with the court; otherwise, to the address shown in the list of creditors or the schedule whichever is filed later, but if a different address is stated in a proof of claim duly filed, that address shall be used.

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a chapter 7 case, the court may, after 90 days following the first date set for the meeting of creditors pursuant to § 341 of the Code, direct that all notices required by subdivision (a) of this rule, except clause (4) thereof, be mailed only to creditors whose claims have been filed and creditors, if any, who are still permitted to file claims by reason of an extension granted under Rule 3002(c)(6).

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(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed under this rule shall be mailed to the committees appointed pursuant to the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a) (2), (3) and (7) of this rule be mailed only to the committees or to their authorized agents and to the creditors and equity security holders who file with the court a request that all notices be mailed to them.

(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case to the Securities and Exchange Commission at Washington, D.C., and at any other place the Commission designates in writing filed with the court if the Commission has filed a notice of appearance in the case or has made a request in writing filed with the court; (2) in a commodity broker case, to the Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case to the District Director of Internal Revenue for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

(k) NOTICE BY PUBLICATION. The court may order notice by publication if it finds that notice by mail as provided in this rule is impracticable or that it is desirable to supplement the notice.

(l) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the person to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(m) CAPTION. The caption of every notice given under this rule shall comply with Rule 1005.

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) DATE AND PLACE. The court shall call a meeting of creditors to be held not less than 20 nor more than 40 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the court may set a later time for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the court within the district convenient for the parties in interest.

(b) ORDER OF MEETING.

(1) Meeting of Creditors. The clerk shall preside at the meeting of creditors unless (1) the court designates a different person, or (2) the creditors who may vote for a trustee under § 702(a) of the Code and who hold a majority in amount of claims that vote designate a presiding officer. In a chapter 11 reorganization case, if a chairman has been selected by a creditors' committee appointed pursuant to § 1102(a)(1), the chairman or his designee shall preside. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a trustee or of a creditors' committee. The presiding officer shall have the authority to administer oaths. When a trustee is elected, the creditors may recommend the amount of the trustee's bond to be fixed by the court.

(2) Meeting of Equity Security Holders. If the court orders a meeting of equity security holders pursuant to § 341(b) of the Code, the clerk shall preside unless the holders of equity security interests present at the meeting who hold a majority in amount of the interests at the meeting designate a presiding officer.

(3) Right to Vote. In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, he has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to § 702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. If the court orders an election of a separate trustee for a general partner's estate under Rule 2009(e)(1), a creditor of the partnership may file a proof of claim or writing evidencing a right to vote for that trustee notwithstanding that a trustee for the partnership has previously qualified. Notwithstanding objection to the amount or allowability of a claim for the purpose of voting, the court may, after such notice and hearing as it may direct, temporarily allow it for that purpose in an amount that seems proper to the court.

(c) MINUTES AND RECORD OF MEETING. Minutes of the meeting of creditors or equity security holders shall be prepared by the presiding officer. Any examination under oath shall be recorded verbatim by electronic sound recording equipment or other means of recording.

(d) REPORT TO THE COURT. The presiding officer shall transmit to the court the name and address of any person elected trustee or a member of a creditors' committee. If an election is disputed, the presiding officer shall promptly inform the court in writing that a dispute exists. Pending disposition by the court of a

disputed election for trustee, the interim trustee shall continue in office. If no motion for the resolution of such election dispute is made to the court within 10 days after the date of the creditors' meeting, the interim trustee shall serve as trustee in the case.

(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.

Rule 2004. Examination

(a) EXAMINATION ON MOTION. On motion of any party in interest, the court may order the examination of any person.

(b) SCOPE OF EXAMINATION. The examination of any person under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In an individual's debt adjustment case under chapter 13 or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTARY EVIDENCE. The attendance of any person for examination and the production of documentary evidence may be compelled in the manner provided in Rule 9016 for the attendance of witnesses at a hearing or trial.

(d) TIME AND PLACE OF EXAMINATION OF DEBTOR. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) MILEAGE. A person other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination

(a) ORDER TO COMPEL ATTENDANCE FOR EXAMINATION. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the debtor is about to leave or has left his residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

(b) REMOVAL. Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the following rules:

(1) If taken at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order.

(2) If taken at a place 100 miles or more from the place of issue of the order, the debtor shall be brought without unnecessary delay before the nearest federal magistrate, bankruptcy judge, or district judge. If, after hearing, the magistrate, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate, bankruptcy judge, or district judge shall issue an order of removal and the person in custody shall be released on conditions assuring prompt appearance before the court which issued the order to compel the attendance.

(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., § 3146(a) and (b).

Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases

(a) APPLICABILITY. This rule applies only in a liquidation case pending under chapter 7 of the Code.

(b) DEFINITIONS.

(1) Proxy. A proxy is a written power of attorney authorizing any person to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate.

(2) Solicitation of Proxy. The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.

(c) AUTHORIZED SOLICITATION.

(1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee elected pursuant to § 705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under § 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over $500 or the 100 creditors having the largest claims had at least five days notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

(2) A proxy may be solicited only in writing.

(d) SOLICITATION NOT AUTHORIZED. This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any person not qualified to vote under § 702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

(e) DATA REQUIRED FROM HOLDERS OF MULTIPLE PROXIES. At any time before the voting commences at any meeting of creditors pursuant to Rule 2003, or at any other time as the court may direct, a holder of two or more proxies shall file with the clerk a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if he is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other person for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any person, other than a member or regular associate of his law firm, which may be allowed the trustee or any person for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by a person other than the proxyholder, or forwarded to the holder by a person who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised by him for the proxy, and whether there is any agreement, and, if so, the particulars thereof, between the solicitor or forwarder and any other person for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any person other

than a member or regular associate of his law firm which may be allowed the trustee or any person for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on his claim.

(f) ENFORCEMENT OF RESTRICTIONS ON SOLICITATION. On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.

Rule 2007. Appointment of Creditors' Committee Organized Before Order for Relief

(a) APPOINTMENT. In a chapter 9 municipality or chapter 11 reorganization case, on application of a party in interest and after notice as the court may direct, the court may appoint as the committee of unsecured creditors required by § 1102(a) of the Code, members of a committee selected before the order for relief in accordance with subdivision (b) of this rule.

(b) SELECTION OF MEMBERS OF COMMITTEE. The court may find that a committee selected by unsecured creditors before the order for relief in a chapter 9 or chapter 11 case of the Code satisfies the requirements of § 1102(b)(1) of the Code if:

(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over $1,000 or the 100 unsecured creditors having the largest claims had at least five days notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection;

(2) all proxies voted at the meeting for the elected committee were solicited pursuant to Rule 2006 and the lists and statements required by subdivision (e) thereof have been filed with the court; and

(3) the organization of the committee was in all other respects fair and proper.

Rule 2008. Notice to Trustee of Selection

The clerk shall immediately notify the trustee of his selection, how he may qualify and, if applicable, the amount of the bond. The trustee shall notify the court in writing of the acceptance or rejection of the office within five days after receipt of notice of selection.

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates pursuant to Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration pursuant to Rule 1015(b) the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) Chapter 7 Liquidation Cases. The court may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

(2) Chapter 11 Reorganization Cases. If a trustee is ordered, the court may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) Chapter 13 Individual's Debt Adjustment Cases. The court may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee, the court shall order separate trustees for estates being jointly administered.

(e) TRUSTEES FOR PARTNERSHIP AND PARTNERS' INDIVIDUAL ESTATES. Notwithstanding the foregoing provisions of this rule, the trustee of a partnership estate shall also be the trustee of the individual estate of any general partner if the estates are being jointly administered unless the court, for cause shown, either (1) permits the creditors of a general partner to elect a separate trustee or (2) appoints a separate trustee for the individual estate.

(f) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

Rule 2010. Qualification by Trustee; Proceeding on Bond

(a) BLANKET BOND. The court may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

(b) QUALIFICATION BY FILING ACCEPTANCE. A trustee for whom a blanket bond has been filed shall qualify by filing an acceptance of the election or appointment.

(c) EVIDENCE OF QUALIFICATION. A certified copy of the order approving the trustee's bond or of the acceptance filed under subdivision (b) of this rule shall constitute conclusive evidence of qualification.

(d) PROCEEDING ON BOND. A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the person injured by the breach of the condition.

Rule 2011. Evidence of Debtor in Possession

Whenever evidence is required that a debtor is a debtor in possession, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

Rule 2012. Substitution of Successor Trustee; Accounting

When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code:

(1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and

(2) within the time fixed by the court, the successor trustee shall prepare and file with the court an accounting of the prior administration of the estate.

Rule 2013. Limitation on Appointment or Employment of Trustees, Examiners, Appraisers and Auctioneers

(a) LIMITATION ON APPOINTMENTS. Appointments of trustees and examiners and employment of appraisers and auctioneers shall be made so that the annual aggregate compensation of any person shall not be disproportionate or excessive, giving proper regard to geographic constraints.

(b) RECORD TO BE KEPT. The clerk shall maintain a public record listing fees paid from estates (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professional persons employed by trustees, and (2) to examiners appointed by the court. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee paid. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge.

(c) SUMMARY OF RECORD. At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees paid during the preceding year. The summary shall be open to examination by the public without charge.

Rule 2014. Employment of Professional Persons

(a) APPLICATION FOR AND ORDER OF EMPLOYMENT. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professional persons pursuant to § 327 or § 1103 of the Code shall be made only on application of the trustee or committee, stating the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for his selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants.

(b) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF ATTORNEYS OR ACCOUNTANTS. If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation or individual may act as attorney or accountant so employed, without further order of the court.

Rule 2015. Duty of Trustee or Debtor in Possession to Keep Records, Make Reports, and Give Notice of Case

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall (1) in a chapter 7 liquidation and a chapter 11 reorganization case and if the court so directs within 30 days after entering on his duties file a complete inventory of the property of the debtor unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file the reports and summaries required by § 704(7) of the Code within the times fixed by the court and which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; (4) as soon as possible after the commencement of the case, give notice of the case to every person known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has knowledge or has previously been notified of the case; (5) within 30 days after the date of the order confirming a plan or within such other time as the court may fix, file a report with the court concerning the action taken by the trustee or debtor in possession and the progress made in the consummation of the plan and file further reports as the court may direct until the plan has been consummated; (6) after consummation of a plan, file an application for a final decree showing that the plan has been consummated, and the names and addresses, if known, of the holders of claims or interests which have not been surrendered or released in accordance with the provisions of the plan and the nature and amounts of claims or interests, and other facts as may be necessary to enable the court to pass on the provisions to be included in the final decree.

(b) CHAPTER 13 TRUSTEE AND DEBTOR

(1) Business Cases. In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (1) - (4) of subdivision (a) of this rule.

(2) Nonbusiness Cases. In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(c) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports.

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

(a) APPLICATION FOR COMPENSATION OR REIMBURSEMENT. A person seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file with the court an application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other person for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other person.

(b) DISCLOSURE OF COMPENSATION PAID OR PROMISED TO ATTORNEY FOR DEBTOR. Every attorney for a debtor, whether or not the attorney applies for compensation, shall file with the court on or before the first date set for the meeting of creditors, or at another time as the court may direct, the statement

required by § 329 of the Code which shall also set forth whether the attorney has shared or agreed to share the compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required.

Rule 2017. Examination of Debtor's Transactions with His Attorney

(a) PAYMENT OR TRANSFER TO ATTORNEY BEFORE COMMENCEMENT OF CASE. On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor, to an attorney for services rendered or to be rendered is excessive.

(b) PAYMENT OR TRANSFER TO ATTORNEY AFTER COMMENCEMENT OF CASE. On motion by the debtor or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after the commencement of a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.

Rule 2018. Intervention; Right to Be Heard

(a) PERMISSIVE INTERVENTION. In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.

(b) INTERVENTION BY ATTORNEY GENERAL OF A STATE. In a chapter 7, 11, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

(c) CHAPTER 9 MUNICIPALITY CASE. The Secretary of the Treasury may, or if requested by the court shall, intervene in a

(d) LABOR UNIONS. In a chapter 9 or 11 case, a labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees but it may not appeal from any judgment, order, or decree in the case unless otherwise permitted by law.

(e) SERVICE ON ENTITIES COVERED BY THIS RULE. The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.

Rule 2019. Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) DATA REQUIRED. In a chapter 9 municipality or chapter 11 reorganization case, except with respect to a committee appointed pursuant to § 1102 of the Code, every person or committee representing more than one creditor or equity security holder and, unless otherwise directed by the court, every indenture trustee, shall file a verified statement with the clerk setting forth (1) the name and address of the creditor or equity security holder; (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of the person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of the person, the organization or formation of the committee, or the appearance in the case of any indenture trustee, the amounts of claims or interests owned by the person, the members of the committee or the indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby the person, committee, or indenture trustee is empowered to act on behalf of creditors or equity security holders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(b) FAILURE TO COMPLY; EFFECT. On motion of any party in interest or on its own initiative, the court may (1) determine whether there has been a failure to comply with the provisions of subdivision (a) of this rule or with any other applicable law

solicitation and, if it so determines, the court may refuse to permit that person, committee, or indenture trustee to be heard further or to intervene in the case; (2) examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or interest acquired by any person or committee in contemplation or in the course of a case under the Code and grant appropriate relief; and (3) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by a person or committee who has not complied with this rule or with § 1125(b) of the Code.

PART III

CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3001. Proof of Claim

(a) FORM AND CONTENT. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim for wages, salary, or commissions shall conform substantially to Official Form No. 20 or No. 21; any other proof of claim shall conform substantially to Official Form No. 19.

(b) WHO MAY EXECUTE. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) CLAIM BASED ON A WRITING. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(d) EVIDENCE OF PERFECTION OF SECURITY INTEREST. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) TRANSFERRED CLAIM.

(1) Unconditional Transfer Before Proof Filed. If a claim other than one based on a bond or debenture has been unconditionally transferred before proof of the claim has been filed, the proof of claim may be filed only by the transferee. If the claim has been transferred after the filing of the petition, the proof of claim shall be supported by (A) a statement of the

transferor acknowledging the transfer and stating the consideration therefor or (B) a statement of the transferee setting forth the consideration for the transfer and why the transferee is unable to obtain the statement from the transferor.

(2) Unconditional Transfer After Proof Filed. If a claim other than one based on a bond or debenture has been unconditionally transferred after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the original claimant by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed with the clerk within 20 days of the mailing of the notice or within any additional time allowed by the court. If the court finds, after a hearing on notice, that the claim has been unconditionally transferred, it shall enter an order substituting the transferee for the original claimant, otherwise the court shall enter such order as may be appropriate.

(3) Transfer of Claim for Security Before Proof Filed. If a claim other than one based on a bond or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If the claim was transferred after the filing of the petition, the proof shall also be supported by (A) a statement of the transferor acknowledging the transfer and stating the consideration therefor, or (B) a statement of the transferee setting forth the consideration for the transfer and why the transferee is unable to obtain the statement from the transferor. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. After a hearing on notice, the court shall enter such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the administration of the estate as may be appropriate.

(4) Transfer of Claim for Security After Proof Filed. If a claim other than one based on a bond or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the original claimant by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed with the clerk within 20 days of the mailing of the notice or within any additional time allowed by the court. After a hearing on notice

the court shall enter such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the administration of the estate as may be appropriate.

(5) Service of Objection; Notice of Hearing. A copy of an objection to the evidence of transfer filed pursuant to paragraph (2) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferee at least 30 days prior to the hearing.

(f) EVIDENTIARY EFFECT. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. An unsecured creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as provided in Rules 3003, 3004 and 3005.

(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) TIME FOR FILING. In a chapter 7 liquidation or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, except as follows:

(1) On motion of the United States, a state, or subdivision thereof before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the United States, a state, or subdivision thereof.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of a person or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that person or denies or avoids the person's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed within such period or such further time as the court may permit, the claim shall not be allowed.

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(4) A claim arising from the rejection of an executory contract of the debtor may be filed within the time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

(6) In a chapter 7 liquidation case, if a surplus remains after all claims allowed have been paid in full, the court may grant an extension of time for the filing of claims against the surplus not filed within the time hereinabove prescribed.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

(a) APPLICABILITY OF RULE. This rule applies in chapter 9 and 11 cases.

(b) SCHEDULE OF LIABILITIES AND LIST OF EQUITY SECUITY HOLDERS.

(1) Schedule of Liabilities. The schedule of liabilities filed pursuant to § 521(1) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

(2) List of Equity Security Holders. The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.

(c) FILING PROOF OF CLAIM.

(1) Who May File. Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) Who Must File. Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim

or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) Time for Filing. The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.

(4) Effect of Filing Claim. A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(1) of the Code.

(5) Filing by Indenture Trustee. An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) PROOF OF RIGHT TO RECORD STATUS. For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, a person who is not the record holder of a security may file a statement setting forth facts which entitle that person to be treated as the record holder. An objection to the statement may be filed by any party in interest.

Rule 3004. Filing of Claims by Debtor or Trustee

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. The creditor may thereafter file a proof of claim pursuant to Rule 3002 or Rule 3003, which proof when filed shall supersede the proof filed by the debtor or trustee.

Rule 3005. Filing of Claim, Acceptance, or Rejection By Guarantor, Surety, Indorser, or Other Codebtor

(a) FILING OF CLAIM. If a creditor has not filed a proof of claim pursuant to Rule 3002(c) or 3003(c), one who is or may be liable with the debtor to that creditor, or who has secured that creditor, may, within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c) whichever is applicable, execute and file a proof of claim in the name of the creditor, if known, or if unknown, in his own name. No distribution

shall be made on the claim except on satisfactory proof that the original debt will be diminished by the amount of distribution. The creditor may thereafter file a proof of claim pursuant to Rule 3002(c) or 3003(c) and it shall supersede the proof of claim filed pursuant to the first sentence of this subdivision.

(b) FILING OF ACCEPTANCE OR REJECTION; SUBSTITUTION OF CREDITOR. One who has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in his own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice with the court prior to confirmation of a plan of his intention to act in his own behalf, the creditor shall be substituted for the obligor with respect to that claim.

Rule 3006. Withdrawal of Claim or Acceptance or Rejection of Plan

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee selected pursuant to §§ 705(a) or 1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

Rule 3007. Objections to Claims

An objection to the allowance of a claim shall be in writing and filed with the court. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

Rule 3008. Reconsideration of Claims

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

Rule 3009. Declaration and Payment of Dividends in Chapter 7 Liquidation Cases

In chapter 7 cases, dividends to creditors shall be paid as promptly as practicable in the amounts and at the times as ordered by the court. Dividend checks shall be made payable and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other person and shall be mailed to the other person.

Rule 3010. Small Dividends and Payments in Chapter 7 Liquidation and Chapter 13 Individual's Debt Adjustment Cases

(a) CHAPTER 7 CASES. In a chapter 7 case no dividend in an amount less than $5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any such dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.

(b) CHAPTER 13 CASES. In a chapter 13 case no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.

Rule 3011. Unclaimed Funds in Chapter 7 Liquidation and Chapter 13 Individual's Debt Adjustment Cases

The trustee shall file with the clerk a list of all known names and addresses of the persons and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

Rule 3012. Valuation of Security

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other person as the court may direct.

Rule 3013. Classification of Claims and Interests

For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§ 1122 and 1322(b)(1) of the Code.

Rule 3014. Election Pursuant to § 1111(b) by Secured Creditor in Chapter 9 Municipality and Chapter 11 Reorganization Cases

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

Rule 3015. Filing of Plan in Chapter 13 Individual's Debt Adjustment Cases

The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter and such time shall not be further extended except for cause shown and on notice as the court may direct. Every proposed plan and any modification thereof shall be dated. The clerk shall include the plan or a summary of the plan with each notice of the hearing on confirmation pursuant to Rule 2002(b). If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.

Rule 3016. Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) TIME FOR FILING PLAN. A party in interest, other than the debtor, who is authorized to file a plan under § 1121(c) of the Code, may file a plan at any time before the conclusion of the hearing on the disclosure statement or thereafter with leave of court.

(b) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case,

identified with the name of the person or persons submitting or filing it.

(c) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement pursuant to § 1125 or evidence showing compliance with § 1126(b) of the Code shall be filed with the plan or within a time fixed by the court.

Rule 3017. Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) HEARING ON DISCLOSURE STATEMENT AND OBJECTIONS THERETO. Following the filing of a disclosure statement as provided in Rule 3016(c), the court shall hold a hearing on not less than 25 days notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider such statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, trustee, any committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed with the court and served on the debtor, the trustee, any committee appointed under the Code and such other entity as may be designated by the court, at any time prior to approval of the disclosure statement or by such earlier date as the court may fix.

(b) DETERMINATION ON DISCLOSURE STATEMENT. Following the hearing the court shall determine whether the disclosure statement should be approved.

(c) DATES FIXED FOR VOTING ON PLAN AND CONFIRMATION. On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) TRANSMISSION AND NOTICE TO CREDITORS AND EQUITY SECURITY HOLDERS. On approval of a disclosure statement, the debtor in possession, trustee, proponent of the plan, or clerk as ordered by the court shall mail to all creditors and equity security holders (1) the plan, or a court approved summary of the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of such plan may be filed; (4) notice of any date fixed for the hearing on confirmation; and (5) such other information as the court may direct including any opinion of the court approving the disclosure statement or a court approved summary of the opinion. In addition,

a form of ballot conforming to Official Form No. 30 shall be mailed to creditors and equity security holders entitled to vote on the plan. In the event the opinion of the court is not transmitted or only a summary of the plan is transmitted, the opinion of the court or the plan shall be provided on request of a party in interest at the expense of the proponent of the plan. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record at the date the order approving the disclosure statement was entered.

Rule 3018. Acceptance or Rejection of Plans

(a) PERSONS ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected by the following entities within the time fixed by the court pursuant to Rule 3017: (1) any creditor whose claim is deemed allowed pursuant to § 502 of the Code or has been allowed by the court; (2) subject to subdivision (b) of this rule, any creditor who is a security holder of record at the date the order approving the disclosure statement is entered whose claim has not been disallowed; and, (3) an equity security holder of record at the date the order approving the disclosure statement is entered whose interest has not been disallowed. For cause shown and within the time fixed for acceptance or rejection of a plan, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

(b) ACCEPTANCES OR REJECTIONS OBTAINED BEFORE PETITION. Acceptances or rejections of a plan may be obtained before the commencement of a case under the Code and may be filed with the court on behalf of (1) the holder of a claim or interest which is deemed allowed pursuant to § 502 of the Code or allowed by the court; (2) a creditor who is a security holder of record at the date specified in the solicitation for the purposes of such solicitation and whose claim has not been disallowed; and (3) an equity security holder of record at the date specified in the solicitation for the purposes of such solicitation and whose interest has not been disallowed. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all impaired creditors and impaired equity security holders, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.

(c) FORM OF ACCEPTANCE OR REJECTION. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or his authorized agent, and conform to Official Form No. 30. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate his preferences among the plans so accepted.

(d) ACCEPTANCE OR REJECTION BY PARTIALLY SECURED CREDITOR. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.

Rule 3019. Modification of Accepted Plan Before Confirmation

After a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code and any other person designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

Rule 3020. Deposit; Confirmation of Plan

(a) DEPOSIT. In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.

(b) OBJECTIONS TO AND HEARING ON CONFIRMATION.

(1) Objections. Objections to confirmation of the plan shall be filed with the court and served on the debtor, the trustee, any committee appointed under the Code and on any other entity designated by the court, within a time fixed by the court. An objection to confirmation is governed by Rule 9014.

(2) Hearing. The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may find, without receiving

evidence, that the plan has been proposed in good faith and not by any means forbidden by law.

(c) Order of Confirmation. The order of confirmation shall conform to Official Form No. 31 and notice of entry thereof shall be mailed promptly by the clerk to the debtor, creditors, equity security holders and other parties in interest.

(d) Retained Power. Notwithstanding the entry of the order of confirmation, the court may enter all orders necessary to administer the estate.

Rule 3021. Distribution Under Plan

After confirmation of a plan, distribution shall be made to creditors whose claims have been allowed, to holders of stock, bonds, debentures, notes, and other securities of record at the time of commencement of distribution whose claims or equity security interests have not been disallowed and to indenture trustees who have filed claims pursuant to Rule 3003(c)(5) and which have been allowed.

Rule 3022. Final Decree

After an estate is fully administered, including distribution of any deposit required by the plan, the court shall enter a final decree (1) discharging any trustee if not previously discharged and cancelling his bond; (2) making provision by way of injunction or otherwise as may be equitable; and (3) closing the case.

PART IV

THE DEBTOR: DUTIES AND BENEFITS

Rule 4001. Relief from Automatic Stay; Use of Cash Collateral

(a) REQUEST FOR RELIEF FROM STAY OR TO USE CASH COLLATERAL. A request for relief from an automatic stay provided by the Code or for the use of cash collateral pursuant to § 363(c)(2) shall be made in accordance with Rule 9014.

(b) FINAL HEARING ON STAY. The stay of any act against property of the estate under § 362(a) of the Code expires 30 days after a final hearing is commenced pursuant to § 362(e)(2) unless within that time the court denies the motion for relief from the stay.

(c) EX PARTE RELIEF FROM STAY. Relief from a stay under § 362(a) may be granted without prior notice to the adverse party only if (1) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or his attorney can be heard in opposition, and (2) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be required. The party obtaining relief under this subdivision and § 362(f) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such person or persons a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay. In that event, the court shall proceed expeditiously to hear and determine the motion.

Rule 4002. Duties of Debtor

In addition to performing other duties prescribed by the Code and rules, the debtor shall (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; and (4) cooperate with the trustee in the preparation of an inventory, the examination of proofs of claim, and the administration of the estate.

Rule 4003. Exemptions

(a) CLAIM OF EXEMPTIONS. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) OBJECTIONS TO CLAIM OF EXEMPTIONS. The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list unless, within such period, further time is granted by the court. Copies of the objections shall be delivered or mailed to the trustee and to the person filing the list and his attorney.

(c) BURDEN OF PROOF. In any hearing under this rule, the objecting party has the burden of proving that the exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

Rule 4004. Grant Or Denial Of Discharge

(a) TIME FOR FILING COMPLAINT OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). In a chapter 11 reorganization case, such complaint shall be filed not later than the first date set for the hearing on confirmation. The court shall give not less than 25 days notice of the time so fixed to all creditors in the manner provided in Rule 2002, and to the trustee and his attorney.

(b) EXTENSION OF TIME. On motion of any party in interest, after hearing on notice, the court may for cause extend the time for filing a complaint objecting to discharge. The motion shall be made before such time has expired.

(c) GRANT OF DISCHARGE. In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge, the court shall forthwith grant the discharge unless (1) the debtor is not an individual, (2) a complaint objecting to the discharge has been filed, or (3) the debtor has filed a waiver under § 727(a)(10) of the Code. Notwithstanding the foregoing, on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within such period, the court may defer entry of the order to a date certain.

(d) APPLICABILITY OF RULES IN PART VII. A proceeding commenced by a complaint objecting to discharge is governed by the rules in Part VII.

(e) ORDER OF DISCHARGE. An order of discharge shall conform to Official Form No. 27.

(f) REGISTRATION IN OTHER DISTRICTS. An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of the bankruptcy court of that district. When so registered

the order of discharge shall have the same effect as an order of the court of the district where registered.

(g) NOTICE OF DISCHARGE. The clerk shall promptly mail a copy of the final order of discharge to the persons specified in subdivision (a) of this rule.

Rule 4005. Burden of Proof in Objecting to Discharge

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving his objection.

Rule 4006. Notice of No Discharge

If an order is entered denying or revoking a discharge or if a waiver of discharge is filed, after the order becomes final or the waiver is filed the clerk shall promptly give notice thereof to all creditors in the manner provided in Rule 2002.

Rule 4007. Determination of Dischargeability of a Debt

(a) PERSONS ENTITLED TO FILE COMPLAINT. A debtor or any creditor may file a complaint with the court to obtain a determination of the dischargeability of any debt.

(b) TIME FOR COMMENCING PROCEEDING OTHER THAN UNDER § 523(c) OF THE CODE. A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN CHAPTER 7 LIQUIDATION AND CHAPTER 11 REORGANIZATION CASES; NOTICE OF TIME FIXED. A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(d) TIME FOR FILING COMPLAINT UNDER § 523(c) IN CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASES; NOTICE OF TIME FIXED. On motion by a debtor for a discharge under

§ 1328(b), the court shall enter an order fixing a time for the filing of a complaint to determine the dischargeability of any debt pursuant to § 523(c) and shall give not less than 30 days notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest after hearing on notice the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(e) APPLICABILITY OF RULES IN PART VII. A proceeding commenced by a complaint filed under this rule is governed by the rules in Part VII.

Rule 4008. Discharge and Reaffirmation Hearing

Not more than 30 days following the entry of an order granting or denying a discharge, or confirming a plan in a chapter 11 reorganization case concerning an individual debtor and on not less than 10 days notice to the debtor and the trustee, the court shall hold a hearing as provided in § 524(d) of the Code. A motion by the debtor for approval of a reaffirmation agreement shall be filed before or at the hearing.

PART V

BANKRUPTCY COURTS AND CLERKS

Rule 5001. Bankruptcy Courts and Clerks' Offices

(a) BANKRUPTCY COURTS ALWAYS OPEN. Bankruptcy courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a bankruptcy judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) CLERK'S OFFICE. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 6(a) F. R. Civ. P. A local rule or order may provide that the clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than those listed in Rule 77 (c) F. R. Civ. P.

Rule 5002. Prohibited Appointments

No person may be appointed as a trustee or examiner or be employed as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to § 327 or § 1103 of the Code if (1) the person is a relative of any judge of the court making the appointment or approving the employment or (2) the person is or has been so connected with any judge of the court making the appointment or approving the employment as to render such appointment or employment improper. Whenever under this rule a person is ineligible for appointment or employment, the person's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof are also ineligible for appointment or employment.

Rule 5003. Records Kept By the Clerk

(a) BANKRUPTCY DOCKETS. The clerk shall keep bankruptcy dockets recording all judgments and orders and the activity in each case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

(b) CLAIMS REGISTER. The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.

(c) JUDGMENTS. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept.

(d) INDEX OF CASES; CERTIFICATE OF SEARCH. The clerk shall keep suitable indices of all cases filed under the Code as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in his custody and certify whether a case has been filed in or transferred to the court or a discharge entered in its records.

(e) OTHER BOOKS AND RECORDS OF THE CLERK. The clerk shall also keep such other books and records as may be required by the Director of the Administrative Office of the United States Courts.

Rule 5004. Disqualification

(a) DISQUALIFICATION OF JUDGE. When a judge is disqualified from acting by 28 U.S.C. § 455, he shall disqualify himself from presiding over the adversary proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, he shall disqualify himself from presiding over the case.

(b) DISQUALIFICATION OF JUDGE FROM ALLOWING COMPENSATION. A judge shall disqualify himself from allowing compensation to a person who is a relative or with whom he is so associated as to render it improper for him to authorize such compensation.

Rule 5005. Filing of Papers

(a) FILING. The petition, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1473, shall be filed with the clerk of the court in which the case under the Code is pending. The judge of that court may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the clerk.

(b) ERROR IN FILING. A paper intended to be filed but erroneously delivered to the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. In the interest of justice, the court may order that the paper shall be deemed filed as of the date of its original delivery.

Rule 5006. Certification of Copies of Papers

The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the court on payment of any prescribed fee.

Rule 5007. Record of Proceedings and Transcripts

(a) FILING OF RECORD OR TRANSCRIPT. The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy with the clerk.

(b) TRANSCRIPT FEES. The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk for the records of the court.

(c) ADMISSIBILITY OF RECORD IN EVIDENCE. A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

Rule 5008. Funds of the Estate

(a) COURT APPROVAL REQUIRED. A deposit or investment for which a bond or deposit of securities is required under § 345(b) of the Code shall not be made until the court, on motion with such notice as the court directs, approves the bond or the deposit of securities.

(b) REPORT OF DEPOSIT OR INVESTMENT. Promptly after making the initial deposit or investment of the estate's funds and thereafter as the court may direct, the trustee shall file a report which identifies the depository or describes the investment and states the amount of any deposit or investment and whether any portion is insured or guaranteed by the United States or a department, agency, or instrumentality of the United States, or backed by the full faith and credit of the United States.

(c) DEPOSIT OF SECURITIES; AGREEMENT. Securities accepted for deposit in lieu of a surety on a depository bond shall be deposited in the custody of the Federal Reserve Bank or branch thereof designated by the court or in the custody of such other person as the court may direct. The securities shall be deposited conditioned on proper accounting for all money deposited or invested and for any return on any such money, prompt repayment of such money and return thereon, and faithful performance of the duties as a depository or entity with whom an investment is made. The entity depositing securities shall execute an agreement for the deposit of securities in favor of the United States which incorporates the foregoing conditions. Securities subject to such an agreement shall be subject to the order of the court.

(d) ACTION ON BOND OR AGREEMENT FOR DEPOSIT OF SECURITIES. Proceedings on a bond given pursuant to § 345(b) of the Code or on an agreement for deposit of securities required by subdivision (c) of this rule shall be in the name of the United States for the use of the estate or any person injured by a breach of the condition.

(e) PROHIBITION OF DEPOSITS WHEN ADEQUACY OF SECURITY DOUBTFUL. No trustee or other person shall deposit or

invest funds received or held by him as a fiduciary under the Code if there is reasonable cause to believe that the bond or the security therefor or the deposited securities are or may be inadequate in view of existing and expected deposits or investments.

(f) REPORTS REQUIRED. Depositories and entitites with whom deposits or investments are made shall file reports as prescribed by regulations of the Director of the Administrative Office of the United States Courts.

(g) DEFICIENCY IN AMOUNT OF BOND OR DEPOSITED SECURITIES. Whenever the bond and any deposited securities do not or will not constitute adequate security because of existing and expected deposits or investments, the court shall require the depository or entity with whom an investment is made to increase the amount of the bond or the deposited securities within a fixed time. If within the time fixed the depository or entity with whom an investment is made fails to increase the amount of the bond or the deposited securities to an amount adequate for existing and expected deposits or investments, the court shall order immediate payment of all money on deposit or invested with it, with all interest payable thereon.

(h) RELIEF FROM LIABILITY ON BOND. A surety on a bond may move to be relieved from liability with respect to any subsequent default. If after hearing on notice to the depository or entity with whom the investment is made, to other sureties, to trustees and to other representatives of estates having money of the estate protected by the bond, the court determines that the motion may be granted without injury to any party in interest, the surety shall be relieved after a new bond or other appropriate security is submitted and approved.

(i) COMBINING OF FUNDS FOR DEPOSIT. The court may authorize the deposit or investment of funds from more than one estate in a single account or investment instrument. The trustee shall maintain records identifying separately the money of each estate. The court shall require that a statement of account be filed at least quarterly.

Rule 5009. Closing Cases

When an estate has been fully administered and the court has discharged the trustee, the case shall be closed.

Rule 5010. Reopening Cases

A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code.

PART VI

COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6001. Burden of Proof As to Validity of Postpetition Transfer

Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.

Rule 6002. Accounting by Prior Custodian of Property of the Estate

(a) ACCOUNTING REQUIRED. Any custodian required by the Code to deliver property in his possession or control to the trustee, shall promptly file a report and account with the bankruptcy court with respect to the property of the estate and his administration thereof.

(b) EXAMINATION OF ADMINISTRATION. On the filing of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after hearing on notice the court shall determine the propriety of the administration, including the reasonableness of all disbursements.

Rule 6003. Disbursement of Money of the Estate

Disbursement of estate funds shall be by check unless another method is approved by the court. On motion of a party in interest, the court may require countersignatures except that signature by the judge shall not be permitted.

Rule 6004. Use, Sale, or Lease of Property

(a) NOTICE OF PROPOSED USE, SALE, OR LEASE OF PROPERTY. Notice of a proposed use, sale, or lease of property other than in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c), and (i).

(b) OBJECTION TO PROPOSAL. Except as provided in subdivision (c) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days

before the date set for the proposed action or within the time fixed by the court.

(c) SALE OF PROPERTY UNDER $2,500. Notwithstanding subdivision (a) of this rule, when all of the nonexempt property of the estate has an aggregate gross value less than $2,500, it shall be sufficient to give a general notice of intent to sell such property other than in the ordinary course of business to all creditors, indenture trustees, committees appointed or elected pursuant to the Code and other persons as the court may direct. An objection to any such sale may be filed and served by a party in interest within 15 days of the mailing of the notice, or within the time fixed by the court.

(d) HEARING. If a timely objection is made pursuant to subdivision (b) or (c) of the rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.

(e) CONDUCT OF SALE NOT IN THE ORDINARY COURSE OF BUSINESS.

(1) Public or Private Sale. All sales not in the ordinary course of business may be private or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed with the clerk on completion of a sale. If the property is sold by an auctioneer, he shall file the statement and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement.

(2) Execution of Instruments. After a sale in accordance with this rule the debtor, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.

Rule 6005. Appraisers and Auctioneers

The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of his compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.

Rule 6006. Assumption, Rejection and Assignment of Executory Contracts

(a) PROCEEDING TO ASSUME, REJECT, OR ASSIGN. A proceeding to assume, reject, or assign an executory contract, including an unexpired lease, other than as part of a plan is governed by Rule 9014.

(b) PROCEEDING TO REQUIRE TRUSTEE TO ACT. A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, or chapter 13 individual's debt adjustment case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014.

(c) HEARING. When a motion is made pursuant to subdivision (a) or (b) of this rule, the court shall set a hearing on notice to the other party to the contract and to other parties in interest as the court may direct.

Rule 6007. Abandonment or Disposition of Property

(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS. Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to all creditors, indenture trustees and committees appointed or elected pursuant to the Code. An objection may be filed and served by a party in interest within 15 days of the mailing of the notice, or within the time fixed by the court.

(b) MOTION BY PARTY IN INTEREST. A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.

(c) HEARING. If a timely objection is made as prescribed by subdivision (a) of this rule, or if a motion is made as prescribed by subdivision (b), the court shall set a hearing on notice to the persons as the court may direct.

Rule 6008. Redemption of Property from Lien or Sale

On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.

Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession

With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.

Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety

If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, on motion by any party in interest after notice and hearing the court shall ascertain the value of such property or lien. If the value is less than the amount for which the property or lien is indemnity, the surety may elect to retain the property or lien on payment of the value so ascertained to the trustee or debtor in possession, within the time fixed by the court.

PART VII

ADVERSARY PROCEEDINGS

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. It is a proceeding in a bankruptcy court (1) to recover money or property, except a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002, (2) to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d), (3) to obtain approval pursuant to § 363(h) for the sale of both the interest of the estate and of a co-owner in property, (4) to object to or revoke a discharge, (5) to revoke an order of confirmation of a chapter 11 or chapter 13 plan, (6) to determine the dischargeability of a debt, (7) to obtain an injunction or other equitable relief, (8) to subordinate any allowed claim or interest, except when subordination is provided in a chapter

9, 11, or 13 plan, (9) to obtain a declaratory judgment relating to any of the foregoing, or (10) to determine a claim or cause of action removed to a bankruptcy court.

Rule 7002. References to Federal Rules of Civil Procedure

Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.

Rule 7003. Commencement of Adversary Proceeding

Rule 3 F. R. Civ. P. applies in adversary proceedings.

Rule 7004. Process; Service of Summons, Complaint

(a) SUMMONS; SERVICE; PROOF OF SERVICE. Rule 4(a), (b), (d), (e) and (g)-(i) F. R. Civ. P. applies in adversary proceedings. Personal service pursuant to Rule 4(d) F. R. Civ. P. may be made by any person not less than 18 years of age who is not a party and the summons may be delivered by the clerk to any such person.

(b) SERVICE BY FIRST CLASS MAIL. In addition to the methods of service authorized by Rule 4(d) F. R. Civ. P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state. The summons and complaint in such case shall be addressed to the person required to be served at his dwelling house or usual place of abode or at the place where he regularly conducts his business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint to the United States attorney for the district in which the action is brought and also the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to such officer or agency.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the person upon whom service is prescribed to be served by any statute of the United States or by the law of the state in which service is made when an action is brought against such defendant in the court of general jurisidiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at his dwelling house or usual place of abode or at the place where he regularly carries on his business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing copies of the summons and complaint to the debtor at the address shown in the petition or statement of affairs or to such other address as the debtor may designate in writing filed with the court and, if the debtor is represented by an attorney, to the attorney at his post-office address.

(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as provided in Rule 4(d) or (i) F. R. Civ. P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail postage prepaid, to the party's last known address and by at least one publication in such manner and form as the court may direct.

(d) NATIONWIDE SERVICE OF PROCESS. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

(e) SERVICE ON DEBTOR AND OTHERS IN FOREIGN COUNTRY. The summons and complaint and all other process except a subpoena may be served as provided in Rule 4(d)(1) and (d)(3) in a foreign country (A) on the debtor, any person required to perform the duties of a debtor, any general partner of a partnership debtor, or any attorney who is a party to a transaction subject to examination under Rule 2017; or (B) on any party to an adversary proceeding to determine or protect rights in property in the custody of the court; or (C) on any person whenever such service is authorized by a federal or state law referred to in Rule 4(d)7) or (e).

(f) SUMMONS: TIME LIMIT FOR SERVICE. If service is made pursuant to Rule 4(d)(1)–(7) it shall be made by delivery of the summons and complaint within 10 days following issuance of the summons. If service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days following issuance of the summons. If a summons is not timely delivered or mailed, another summons shall be issued and served.

Rule 7005. Service and Filing of Pleadings and Other Papers

Rule 5 F. R. Civ. P. applies in adversary proceedings.

Rule 7007. Pleadings Allowed

Rule 7 F. R. Civ. P. applies in adversary proceedings.

Rule 7008. General Rules of Pleading

(a) APPLICABILITY OF RULE 8 F. R. CIV. P. Rule 8 F. R. Civ. P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending.

(b) ATTORNEY'S FEES. A request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate.

Rule 7009. Pleading Special Matters

Rule 9 F. R. Civ. P. applies in adversary proceedings.

Rule 7010. Form of Pleadings

Rule 10 F. R. Civ. P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to Official Form No. 34.

Rule 7012. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on the Pleadings

(a) WHEN PRESENTED. If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 20 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading

shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of a more definite statement.

(b) APPLICABILITY OF RULE 12(b)-(h) F. R. Civ. P. Rule 12(b)-(h) F. R Civ. P. applies in adversary proceedings.

Rule 7013. Counterclaim and Cross-Claim

Rule 13 F. R. Civ. P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim which he has against the debtor, his property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action.

Rule 7014. Third-Party Practice

Rule 14 F. R. Civ. P. applies in adversary proceedings.

Rule 7015. Amended and Supplemental Pleadings

Rule 15 F. R. Civ. P. applies in adversary proceedings.

Rule 7016. Pre-Trial Procedure; Formulating Issues

Rule 16 F. R. Civ. P. applies in adversary proceedings.

Rule 7017. Parties Plaintiff and Defendant; Capacity

Rule 17 F. R. Civ. P. applies in adversary proceedings, except as provided in Rules 2010(d) and 5008(d).

Rule 7018. Joinder of Claims and Remedies

Rule 18 F. R. Civ. P. applies in adversary proceedings.

Rule 7019. Joinder of Persons Needed for Just Determination

Rule 19 F. R. Civ. P. applies in adversary proceedings, except that (1) if a person joined as a party raises the defense that the bankruptcy court lacks jurisdiction over the subject matter and the defense is sustained, the court shall dismiss such person from the adversary proceedings and (2) if a person joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1477, whether that part of the proceeding involving the joined party shall be retained or transferred to another district, or whether the entire adversary proceeding shall be transferred to another district.

Rule 7020. Permissive Joinder of Parties

Rule 20 F. R. Civ. P. applies in adversary proceedings.

Rule 7021. Misjoinder and Non-Joinder of Parties

Rule 21 F. R. Civ. P. applies in adversary proceedings.

Rule 7022. Interpleader

Rule 22(1) F. R. Civ. P. applies in adversary proceedings.

Rule 7023. Class Proceedings

Rule 23 F. R. Civ. P. applies in adversary proceedings.

Rule 7023.1. Derivative Proceedings by Shareholders

Rule 23.1 F. R. Civ. P. applies in adversary proceedings.

Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations

Rule 23.2 F. R. Civ. P. applies in adversary proceedings.

Rule 7024. Intervention

Rule 24 F. R. Civ. P. applies in adversary proceedings.

Rule 7025. Substitution of Parties

Subject to the provisions of Rule 2012, Rule 25 F. R. Civ. P. applies in adversary proceedings.

Rule 7026. General Provisions Governing Discovery

Rule 26 F. R. Civ. P. applies in adversary proceedings.

Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal

Rule 27 F. R. Civ. P. applies to adversary proceedings.

Rule 7028. Persons Before Whom Depositions May Be Taken

Rule 28 F. R. Civ. P. applies in adversary proceedings.

Rule 7029. Stipulations Regarding Discovery Procedure

Rule 29 F. R. Civ. P. applies in adversary proceedings.

Rule 7030. Depositions Upon Oral Examination

Rule 30 F. R. Civ. P. applies in adversary proceedings.

Rule 7031. Deposition Upon Written Questions

Rule 31 F. R. Civ. P. applies in adversary proceedings.

Rule 7032. Use of Depositions in Adversary Proceedings

Rule 32 F. R. Civ. P. applies in adversary proceedings.

Rule 7033. Interrogatories to Parties

Rule 33 F. R. Civ. P. applies in adversary proceedings.

Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

Rule 34 F. R. Civ. P.applies in adversary proceedings.

Rule 7035. Physical and Mental Examination of Persons

Rule 35 F. R. Civ. P. applies in adversary proceedings.

Rule 7036. Requests for Admission

Rule 36 F. R. Civ. P. applies in adversary proceedings.

Rule 7037. Failure to Make Discovery: Sanctions

Rule 37 F. R. Civ. P. applies in adversary proceedings.

Rule 7040. Assignment of Cases for Trial

Rule 40 F. R. Civ. P. applies in adversary proceedings.

Rule 7041. Dismissal of Adversary Proceedings

Rule 41 F. R. Civ. P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee and only on order of the court containing terms and conditions which the court deems proper.

Rule 7042. Consolidation of Adversary Proceedings; Separate Trials

Rule 42 F. R. Civ. P. applies in adversary proceedings.

Rule 7052. Findings by the Court

Rule 52 F. R. Civ. P. applies in adversary proceedings.

Rule 7054. Judgments; Costs

(a) JUDGMENTS. Rule 54(a)-(c) F. R. Civ. P. applies in adversary proceedings.

(b) COSTS. The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court.

Rule 7055. Default

Rule 55 F. R. Civ. P. applies in adversary proceedings.

Rule 7056. Summary Judgment

Rule 56 F. R. Civ. P. applies in adversary proceedings.

Rule 7062. Stay of Proceedings to Enforce a Judgment

Rule 62 F. R. Civ. P. applies in adversary proceedings except that an order granting relief from an automatic stay provided by § 362, § 922, or § 1301 of the Code, an order authorizing or prohibiting the use of cash collateral or property of the estate under § 363, and an order authorizing the trustee to obtain credit pursuant to § 364 shall be additional exceptions to Rule 62(a).

Rule 7064. Seizure of Person or Property

Rule 64 F. R. Civ. P. applies in adversary proceedings.

Rule 7065. Injunctions

Rule 65 F. R. Civ. P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).

Rule 7067. Deposit in Court

Rule 67 F. R. Civ. P. applies in adversary proceedings.

Rule 7068. Offer of Judgment

Rule 68 F. R. Civ. P. applies in adversary proceedings.

Rule 7069. Execution

Rule 69 F. R. Civ. P. applies in adversary proceedings.

Rule 7070. Judgment for Specific Acts; Vesting Title

Rule 70 F. R. Civ. P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is subject to the jurisdiction of the bankruptcy court.

Rule 7071. Process in Behalf of and Against Persons Not Parties

Rule 71 F. R. Civ. P. applies in adversary proceedings.

Rule 7087. Transfer of Adversary Proceeding

On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1475 and § 1477, except as provided in Rule 7019(2).

PART VIII

APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Effect of Appeal to Court of Appeals

(a) APPEAL AS OF RIGHT; HOW TAKEN. An appeal from a final judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel shall be taken by filing a notice of appeal with the clerk of the bankruptcy court within the time allowed by Rule 8002. Failure of an appellant to take any step other

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than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall conform substantially to Official Form No. 35, shall contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses and telephone numbers of their respective attorneys, and be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk of the bankruptcy court to comply promptly with Rule 8004.

(b) APPEAL BY LEAVE; HOW TAKEN. An appeal from an interlocutory judgment, order or decree of a bankruptcy judge as permitted by 28 U.S.C. § 1334(b) or § 1482(b) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) VOLUNTARY DISMISSAL.

(1) Before Docketing. If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(2) After Docketing. If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

(d) EFFECT OF TAKING A DIRECT APPEAL TO THE COURT OF APPEALS.

(1) Dismissal of Pending Appeal to the District Court or the Bankruptcy Appellate Panel. On the filing of a notice of a direct appeal by agreement of the parties to the court of appeals under 28 U.S.C. § 1293(b), the clerk of the bankruptcy court shall enter an order vacating any prior notice of appeal to the district court or bankruptcy appellate panel from the same judgment, order, or decree of the bankruptcy court and, if the appeal to the district court or bankruptcy appellate panel has not been docketed, the clerk of the bankruptcy court shall enter an order dismissing the appeal. If the appeal to the district

court or bankruptcy appellate panel has been docketed, the clerk of the bankruptcy court shall forward to the clerk of the district court or the clerk of the bankruptcy appellate panel a copy of the order vacating the notice of appeal and on receipt thereof the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal.

(2) Dismissal of Subsequent Appeal to the District Court or the Bankruptcy Appellate Panel. If a notice of direct appeal under 28 U.S.C. § 1293(b) is filed and thereafter a notice of appeal to the district court or bankruptcy appellate panel from the same judgment, order, or decree is filed, the clerk of the bankruptcy court shall enter an order dismissing the appeal to the district court or the bankruptcy appellate panel.

(3) Appeal After Dismissal of Direct Appeal by Court of Appeals. If the direct appeal under 28 U.S.C. § 1293(b) is dismissed by the court of appeals on the ground that the judgment, order, or decree appealed from is not final, the appellant or cross appellant may, within 10 days of entry of the order of the dismissal in the court of appeals, file a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

Rule 8002. Time for Filing Notice of Appeal

(a) TEN-DAY PERIOD. The notice of appeal shall be filed with the clerk of the bankruptcy court within 10 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of that court or the clerk of the appellate panel shall note thereon the date on which it was received and transmit it to the clerk of the bankruptcy court and it shall be deemed filed in the bankruptcy court on the date so noted.

(b) EFFECT OF MOTION ON TIME FOR APPEAL. If a timely motion is filed in the bankruptcy court by any party: (1) for judgment notwithstanding the verdict under Rule 9015; (2) under Rule 7052(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 9023 to alter or amend the judgment; or (4) under Rule 9023 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or

granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect; a new notice of appeal must be filed. No additional fees shall be required for such filing.

(c) EXTENSION OF TIME FOR APPEAL. The bankruptcy court may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before the time for filing a notice of appeal has expired, except that a request made no more than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect if the judgment or order appealed from does not authorize the sale of any property or the obtaining of credit or the incurring of debt under § 364 of the Code, or is not a judgment or order approving a disclosure statement, confirming a plan, dismissing a case, or converting the case to a case under another chapter of the Code.

Rule 8003. Leave to Appeal

(a) CONTENT OF MOTION; ANSWER. A motion for leave to appeal under 28 U.S.C. § 1334(b) or § 1482(b) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 10 days after service of the motion an adverse party may file with the clerk of the bankruptcy court an answer in opposition.

(b) TRANSMITTAL; DETERMINATION OF MOTION. The clerk of the bankruptcy court shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

(c) APPEAL IMPROPERLY TAKEN REGARDED AS MOTION FOR LEAVE TO APPEAL. If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 10 days of entry of the order.

Rule 8004. Service of the Notice of Appeal

The clerk of the bankruptcy court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if a party is not represented by counsel, to the party at his last known address. Failure to serve notice shall not affect the validity of the appeal. The clerk shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom copies are mailed and the date of the mailing.

Rule 8005. Stay Pending Appeal

A motion for a stay of the judgment, order, or decree of a bankruptcy court, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance in the bankruptcy court. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy court may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by the bankruptcy court, may be made to the district court or the bankruptcy appellate panel, but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy court. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States a bond or other security shall not be required.

Rule 8006. Record and Issues on Appeal

Within 10 days after filing the notice of appeal as provided by Rule 8001(a) or entry of an order granting leave to appeal the appellant shall file with the clerk of the bankruptcy court and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within seven days after the service of the statement of the appellant the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be

presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within seven days of service of the statement of the cross appellant, file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. If the record designated by any party includes a transcript of any proceeding or a part thereof, he shall immediately after filing the designation deliver to the reporter and file with the clerk of the bankruptcy court a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

Rule 8007. Completion and Transmission of the Record; Docketing of the Appeal

(a) DUTY OF REPORTER TO PREPARE AND FILE TRANSCRIPT. On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which he expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk of the bankruptcy court. On completion of the transcript the reporter shall file it with the clerk of the bankruptcy court. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk of the bankruptcy court and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk of the bankruptcy court shall notify the bankruptcy judge.

(b) DUTY OF CLERK TO TRANSMIT RECORD; COPIES OF RECORD; DOCKETING OF APPEAL. When the record is complete for purposes of appeal, the clerk of the bankruptcy court shall transmit it forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel. If the record is to be retained in the bankruptcy court as provided in subdivision (c) of this rule, the clerk shall transmit the notice of appeal and the judgment, order, or decree appealed from, and any opinion, findings of fact and conclusions of law of the court. On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed. If the bankruptcy appellate panel directs that additional copies of the record be furnished, the clerk of the bankruptcy appellate panel shall notify the appellant and, if the appellant fails to provide the copies, the clerk shall prepare the copies at the expense of the appellant.

(c) RETENTION OF RECORD IN BANKRUPTCY COURT. Any part of the record on appeal may be retained in the bankruptcy court if the parties to the appeal so stipulate or the bankruptcy court so orders. The record on appeal for all purposes shall nevertheless be the record as designated under Rule 8006. When the bankruptcy court has ordered retention, the parties shall provide to the clerk of the bankruptcy court copies of any papers retained and the clerk shall transmit those copies to the district court or the bankruptcy appellate panel. If papers have been retained pursuant to a stipulation of the parties, on request of a party to the stipulation the clerk of the bankruptcy court shall transmit the papers so requested to the district court or the bankruptcy appellate panel. On order of the district court or the bankruptcy appellate panel the bankruptcy clerk shall transmit any retained papers to the clerk of that court or the clerk of the appellate panel.

(d) RECORD FOR PRELIMINARY HEARING. If prior to the time the record is transmitted a party moves in the district court or before the bankruptcy appellate panel for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the bankruptcy court at the request of any party to the appeal shall transmit to the clerk of the district court or the clerk of the bankruptcy appellate panel the parts of the original record as any party to the appeal shall designate.

Rule 8008. Filing and Service

(a) FILING. Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished.

(b) SERVICE OF ALL PAPERS REQUIRED. Copies of all papers filed by any party and not required by these rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel shall, at or before the time of filing, be served by the party or a person acting for him on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) MANNER OF SERVICE. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or

other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) PROOF OF SERVICE. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.

Rule 8009. Briefs and Appendix; Filing and Service

(a) BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

(1) The appellant shall serve and file his brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.

(2) The appellee shall serve and file his brief within 15 days after service of the brief of appellant. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.

(b) APPENDIX TO BRIEF. If the appeal is to a bankruptcy appellate panel, the appellant shall serve and file with his brief excerpts of the record as an appendix, which shall include the following:

(1) The complaint and answer or other equivalent pleadings;
(2) Any pretrial order;
(3) The judgment, order, or decree from which the appeal is taken;
(4) Any other orders relevant to the appeal;

(5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;

(6) Any motion and response on which the court rendered decision;

(7) The notice of appeal; and

(8) The relevant entries in the bankruptcy court docket.

An appellee may also serve and file an appendix which contains material required to be included by the appellant but omitted by appellant.

Rule 8010. Form of Briefs; Length

(a) FORM OF BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule otherwise provides, the form of brief shall be as follows:

(1) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(A) A table of contents, with page references, and a table of cases alphabetically arranged, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(B) A statement of the basis of appellate jurisdiction.

(C) A statement of the issues presented and the applicable standard of appellate review.

(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and the disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(F) A short conclusion stating the precise relief sought.

(2) Brief of the Appellee. The brief of the appellee shall conform to the requirements of paragraph (1) (A)-(E) of this subdivision, except that a statement of the basis of appellate jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(b) REPRODUCTION OF STATUTES, RULES, REGULATIONS, OR SIMILAR MATERIAL. If determination of the issues presented requires reference to the Code or other statutes, rules, regulations, or similar material, relevant parts thereof shall be reproduced in the brief or in an addendum or they may be supplied to the court in pamphlet form.

(c) LENGTH OF BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule or order otherwise provides, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or similar material.

Rule 8011. Motions

(a) CONTENT OF MOTIONS; RESPONSE; REPLY. A request for an order or other relief shall be made by filing with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion.

(b) DETERMINATION OF MOTIONS FOR PROCEDURAL ORDERS. Notwithstanding subdivision (a) of this rule, motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action.

(c) DETERMINATION OF ALL MOTIONS. All motions will be decided without oral argument unless the court orders otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.

(d) EMERGENCY MOTIONS. Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall be accompanied by an

affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

(e) POWER OF A SINGLE JUDGE TO ENTERTAIN MOTIONS. A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal. The action of a single judge may be reviewed by the panel.

Rule 8012. Oral Argument

Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed. Any party shall have an opportunity to file a statement setting forth the reason why oral argument should be allowed.

Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record and the decisional process would not be significantly aided by oral argument.

Rule 8013. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy court's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

Rule 8014. Costs

Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the production of copies of briefs, the appendices, and the record and in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal and the fee for filing the notice of appeal shall be taxed by the clerk of the bankruptcy court as costs of the appeal in favor of the party entitled to costs under this rule.

Rule 8015. Motion for Rehearing

Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 10 days after entry of the judgment of the district court or the bankruptcy appellate panel.

Rule 8016. Duties of Clerk of District Court and Bankruptcy Appellate Panel

(a) ENTRY OF JUDGMENT. The clerk of the district court or the clerk of the bankruptcy appellate panel shall prepare, sign and enter the judgment following receipt of the opinion of the court or the appellate panel or, if there is no opinion, following the instruction of the court or the appellate panel. The notation of a judgment in the docket constitutes entry of judgment.

(b) NOTICE OF ORDERS OR JUDGMENTS; RETURN OF RECORD. Immediately on the entry of a judgment or order the clerk of the district court or the clerk of the bankruptcy appellate panel shall transmit a notice of the entry to each party to the appeal and to the clerk of the bankruptcy court, together with a copy of any opinion respecting the judgment or order, and shall make a note of the transmission in the docket. Original papers transmitted as the record on appeal shall be returned to the bankruptcy court on disposition of the appeal.

Rule 8017. Stay of Judgment of District Court or Bankruptcy Appellate Panel

(a) AUTOMATIC STAY OF JUDGMENT ON APPEAL. Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 10 days after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel.

(b) STAY PENDING APPEAL TO THE COURT OF APPEALS. On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals. The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown. If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who obtained the stay, the stay shall continue until final disposition by the court of appeals. A bond or other security may be required as a condition to the grant or continuation of a stay of the judgment. A bond or other security may be required if a trustee obtains a stay but a bond or security shall not be required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.

(c) POWER OF COURT OF APPEALS NOT LIMITED. This rule does not limit the power of a court of appeals or any judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

Rule 8018. Rules by Circuit Councils and District Courts

Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 160 and the district courts in districts in which an appellate panel has not been authorized may by action of a majority of the judges of the council or district court make and amend rules governing practice and procedure for appeals from the bankruptcy courts to the respective bankruptcy appellate panel or district court, not inconsistent with the rules of this Part VIII. Copies of rules and amendments so made shall on promulgation be furnished to the Administrative Office of the United States Courts. The clerk of each district court and the clerk of each bankruptcy appellate panel shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, for making copies of such rules available to members of the public who may request them. In all cases not provided for by

rule, the district court or the bankruptcy appellate panel may regulate its practice in any manner not inconsistent with these rules.

Rule 8019. Suspension of Rules in Part VIII

In the interest of expediting decision or for other good cause, the district court or the bankruptcy appellate panel may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002 and 8013, and may order proceedings in accordance with its direction.

PART IX

GENERAL PROVISIONS

Rule 9001. General Definitions

The definitions of words and phrases in § 101, § 902 and § 1101 and the rules of construction in § 102 of the Code govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

(1) "Act" means the Bankruptcy Act of 1898 as amended.

(2) "Bankruptcy court," "court," or "United States Bankruptcy Court" means the court of bankruptcy as defined in § 1(10) and created under § 2a of the Act and the United States Bankruptcy Court created under 28 U.S.C. § 151.

(3) "Bankruptcy Code" or "Code" means title 11 of the United States Code.

(4) "Clerk" means clerk of the bankruptcy court.

(5) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control.

(6) "Firm" includes a partnership or professional corporation of attorneys or accountants.

(7) "Judgment" means any appealable order.

(8) "Mail" means first class, postage prepaid.

(9) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.

(10) "Trustee" includes a debtor in possesion in a chapter 11 case.

Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under The Code

The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:

(1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) "Appeal" means an appeal as provided by 28 U.S.C. § 1334 or § 1482.

(3) "Clerk" or "clerk of the district court" means clerk of the bankruptcy court.

(4) "District court," "trial court," "court," or "judge" means bankruptcy judge.

(5) "Judgment" includes any order appealable to an appellate court.

Rule 9003. Prohibition of Ex Parte Contacts

Except as otherwise permitted by applicable law, any party in interest and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the bankruptcy judge concerning matters affecting a particular case or proceeding.

Rule 9004. General Requirements of Form

(a) LEGIBILITY; ABBREVIATIONS. All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) CAPTION. Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.

Rule 9005. Harmless Error

Rule 61 F. R. Civ. P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

Rule 9006. Time

(a) COMPUTATION. In computing any period of time prescribed or allowed by these rules, by the local rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 5001(c), "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the bankruptcy court is held.

(b) ENLARGEMENT.

(1) IN GENERAL. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) ENLARGEMENT NOT PERMITTED. The court may not enlarge the time for taking action under Rule 1007(d), 1017(b)(3), 1019(2), 2003(a) and (d), 4001(b), 7052, 9015(f), 9023, and 9024.

(3) ENLARGEMENT LIMITED. The court may enlarge the time for taking action under Rules 1006(b)(2), 3002(c), 4003(b), 4004(a), 4007(c), and 8002 only to the extent and under the conditions stated in those rules.

(c) REDUCTION.

(1) IN GENERAL. Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) REDUCTION NOT PERMITTED. The court may not reduce the time for taking action under Rules 2002(a)(4) and (a)(8), 2003(a), 3002(c), 3014, 3015, 4003(a), 4004(a), 4007(c) and 8002.

(d) FOR MOTIONS—AFFIDAVITS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than five days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 9023, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

(e) TIME OF SERVICE. Service of process and service of any paper other than process or of notice by mail is complete on mailing.

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL. When there is a right or requirement to do some act or undertake some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail, three days shall be added to the prescribed period.

Rule 9007. General Authority to Regulate Notices

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time within which, the persons to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Rule 9008. Service or Notice by Publication

Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications.

Rule 9009. Forms

The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

Rule 9010. Representation and Appearances; Powers of Attorney

(a) AUTHORITY TO ACT PERSONALLY OR BY ATTORNEY. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in his or its own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.

(b) NOTICE OF APPEARANCE. An attorney appearing for a party in a case under the Code shall file a notice of appearance with his name, office address and telephone number, unless his appearance is otherwise noted in the record.

(c) POWER OF ATTORNEY. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to Official Form No. 17 or Official Form No. 18. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, or a person authorized to administer oaths under the laws of the state where the oath is administered.

Rule 9011. Signing and Verification of Papers

(a) SIGNATURE. Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, statement of financial affairs, statement of executory contracts, Chapter 13 Statement, or amendments thereto, shall be signed by at least one attorney of record in his individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state his address and telephone number. The signature of an attorney or a party constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harrass, to cause delay, or to increase the cost of litigation. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

(b) VERIFICATION. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.

(c) COPIES OF SIGNED OR VERIFIED PAPERS. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

Rule 9012. Affirmations

When in a case under the Code an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a

hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor in possession and on those persons specified by these rules or, if service is not required or the persons to be served are not specified by these rules, the moving party shall serve the persons the court directs.

Rule 9014. Contested Matters

In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules shall apply: 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7062, 7064, 7069, and 7071. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. A person who desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order.

Rule 9015. Jury Trial

(a) TRIAL BY JURY. Issues triable of right by jury shall, if timely demanded, be by jury, unless the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury.

(b) DEMAND.

(1) TIME; FORM. Any party may demand a trial by jury of any issue triable by a jury by serving on the other parties a demand therefor in writing not later than 10 days after service of the last pleading directed to such issue. The demand may be indorsed on a pleading of the party. When a jury trial is demanded it shall be designated by the clerk in the docket as a jury matter.

(2) SPECIFICATION OF ISSUES. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury of all the issues so triable. If he has demanded trial by jury of only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues.

(3) DETERMINATION BY COURT. On motion or on its own initiative the court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded or whether a demand for trial by jury in a proceeding on a contested petition shall be granted.

(c) WAIVER. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5005 constitutes a waiver of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(d) TRIAL BY THE COURT. Issues not demanded for trial by jury shall be tried by the court. Notwithstanding the failure of a party to demand a jury when such a demand might have been made of right, the court on its own initiative may order a trial by jury of any or all issues.

(e) ADVISORY JURY AND TRIAL BY CONSENT. In all actions not triable of right by jury the court on motion or on its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(f) APPLICABILITY OF CERTAIN OF THE FEDERAL RULES OF CIVIL PROCEDURE. Rules 47-51 of F. R. Civ. P. apply when a jury trial is conducted.

Rule 9016. Subpoena

Rule 45 F. R. Civ. P. applies in bankruptcy cases under the Code.

Rule 9017. Evidence

The Federal Rules of Evidence and Rules 43, 44 and 44.1 F. R. Civ. P. apply in cases under the Code.

Rule 9018. Secret Confidential, Scandalous, or Defamatory Matter

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

Rule 9019. Compromise and Arbitration

(a) COMPROMISE. On motion by the trustee and after a hearing on notice to creditors, the debtor and indenture trustees as provided in Rule 2002(a) and to such other persons as the court may designate, the court may approve a compromise or settlement.

(b) AUTHORITY TO COMPROMISE OR SETTLE CONTROVERSIES WITHIN CLASSES. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) ARBITRATION. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

Rule 9020. Criminal Contempt Proceedings

(a) PROCEDURE

(1) SUMMARY DISPOSITION. Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481 may be punished summarily by a bankruptcy judge if he saw or heard the conduct constituting the contempt and if it was committed in his actual presence. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(2) DISPOSITION AFTER A HEARING. Criminal contempt which may be punished by a bankruptcy judge acting pursuant

to 28 U.S.C. § 1481, except when determined as provided in paragraph (1) of this subdivision, may be punished by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the criminal contempt charged and describe the contempt as criminal and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.

(3) CERTIFICATION TO DISTRICT COURT. If it appears to a bankruptcy judge that criminal contempt has occurred but the court is without power under 28 U.S.C. § 1481, to punish or to impose the appropriate punishment for the criminal contempt the judge may certify the facts to the district court.

(b) RIGHT TO JURY TRIAL. Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.

Rule 9021. Entry of Judgment; District Court Record of Judgment

(a) ORIGINAL ENTRY OF JUDGMENT OF BANKRUPTCY COURT. Subject to the provisions of Rule 54(b) F. R. Civ. P: (1) on a general verdict of a jury, or on a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign and enter the judgment without awaiting any direction by the court; (2) on a decision by the court granting other relief, or on a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter it. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. Entry of the judgment shall not be delayed for the taxing of costs.

(b) DISTRICT COURT RECORD OF JUDGMENTS OF BANKRUPTCY COURTS. On certification by the clerk of the bankruptcy court to the clerk of the district court of a copy of a judgment of the bankruptcy court for the recovery of money or property, the clerk of the district court shall keep and index the copy in substantially the form and manner prescribed by Rule 79 F. R. Civ. P. for judgments of the district court. Retention and

indexing of a judgment by the clerk of the district court under this subdivision shall not affect its appealability or proceedings on appeal from the judgment under the rules in Part VIII, the availability of process to enforce the judgment under Rule 7069, or the availability of relief under Rule 7062 or 7070 but after it has been so indexed, the judgment shall have the same effect and may be enforced as a judgment of the district court so indexed.

(c) ENTRY OF JUDGMENT OF DISTRICT COURT. A judgment entered by a district judge in a case or proceeding under the Code shall be indexed in the district court's civil docket. The clerk of the district court shall certify a copy of the judgment to the clerk of the bankruptcy court.

Rule 9022. Notice of Judgment or Order

(a) JUDGMENT OR ORDER OF BANKRUPTCY JUDGE. Immediately on the entry of a judgment or order the clerk shall serve a notice of the entry by mail in the manner provided by Rule 7005 on the contesting parties and on other entities as the court directs. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

(b) JUDGMENT OR ORDER OF DISTRICT JUDGE. Notice of a judgment or order entered by a district judge while acting in a case under the Code is governed by Rule 77(d) F. R. Civ. P.

Rule 9023. New Trials; Amendment of Judgments

Rule 59 F. R. Civ. P. applies in cases under the Code, except as provided in Rule 3008.

Rule 9024. Relief from Judgment or Order

Rule 60 F. R. Civ. P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144 or § 1330.

Rule 9025. Security: Proceedings Against Sureties

Whenever the Code or these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

Rule 9026. Exceptions Unnecessary

Rule 46 F. R. Civ. P. applies in cases under the Code.

Rule 9027. Removal

(a) APPLICATION.

(1) WHERE FILED; FORM AND CONTENT. An application for removal shall be filed in the bankruptcy court for the district and division within which is located the state or federal court where the civil action is pending. The application shall be verified and contain a short and plain statement of the facts which entitle the applicant to remove and be accompanied by a copy of all process and pleadings.

(2) TIME FOR FILING; CIVIL ACTION INITIATED BEFORE COMMENCEMENT OF THE CASE UNDER THE CODE. If the claim or cause of action in a civil action is pending when a case under the Code is commenced, an application for removal may be filed in the bankruptcy court only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) TIME FOR FILING; CIVIL ACTION INITIATED AFTER COMMENCEMENT OF THE CASE UNDER THE CODE. If a case under the Code is pending when a claim or cause of action is asserted in a court other than a bankruptcy court, an application for removal may be filed in the bankruptcy court only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth the claim or cause of action sought to be removed or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) BOND. An application for removal, except when the applicant is the trustee, debtor, debtor in possession, or the United States shall be accompanied by a bond with good and sufficient surety conditioned that the party will pay all costs and disbursements incurred by reason of the removal should it be determined that the claim or cause of action was not removable or was improperly removed.

(c) NOTICE. Promptly after filing the application and the bond, if required, in the bankruptcy court, the applicant shall serve a copy of the application on all parties to the removed claim or cause of action.

(d) FILING IN NON-BANKRUPTCY COURT. Removal of the claim or cause of action is effected on the filing of a copy of the removal application with the clerk of the court from which the claim or cause of action is removed. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(e) REMAND. A motion for remand of the removed claim or cause of action may be filed only in the bankruptcy court and shall be served on the parties to the removed claim or cause of action. A motion to remand shall be determined as soon as practicable. A certified copy of an order of remand shall be mailed to the clerk of the court from which the claim or cause of action was removed.

(f) PROCEDURE AFTER REMOVAL.

(1) After removal of a claim or cause of action to a bankruptcy court the bankruptcy court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The bankruptcy court may require the applicant to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(g) PROCESS AFTER REMOVAL. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued in the same manner as in adversary proceedings originally filed in the bankruptcy court. This subdivision shall not deprive any defendant on whom process is served after removal of his right to move to remand the case.

(h) APPLICABILITY OF PART VII. The rules of Part VII apply to a claim or cause of action removed to a bankruptcy court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, he shall answer or present the other defenses or objections available to him under the rules of Part VII within 20 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 20 days following the service of summons on such initial pleading, or within five days following the filing of the application for removal, whichever period is longest.

(i) TIME FOR FILING A DEMAND FOR JURY TRIAL. If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury shall be accorded it, if his demand therefor is served within 10 days following the filing of the application for removal if he is the applicant, or if he is not the applicant, within 10 days following service on him of notice of the filing of the application. A party who, prior to removal, has made an express demand for trial by jury in accordance with federal or state law, need not renew the demand after removal. If state law applicable in the court from which the claim or cause of action is removed does not require the parties to make an express demand for trial by jury, they need not make a demand after removal unless the bankruptcy court so directs. The bankruptcy court may so direct on its own initiative and shall so direct at the request of any party to the removed claim or cause of action. The failure of a party to make demand as directed constitutes a waiver by him of trial by jury.

(j) RECORD SUPPLIED. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in a bankruptcy court, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the bankruptcy court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the bankruptcy court, and all process awarded, as if certified copies had been filed in the bankruptcy court.

(k) ATTACHMENT OR SEQUESTRATION; SECURITIES. When a claim or cause of action is removed to a bankruptcy court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decee in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall

remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the bankruptcy court.

Rule 9028. Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an involuntary petition or an adversary proceeding has been tried or a hearing conducted is unable to perform the duties to be performed by the court under these rules after a verdict is returned, or findings of fact and conclusions of law or a memorandum is filed, then any other judge regularly sitting in or assigned to the court in which the trial or hearing was conducted may perform those duties; but if the other judge is satisfied that he cannot perform those duties because he did not preside or for any other reason, he may in his discretion grant a new trial.

Rule 9029. Local Bankruptcy Rules

Each bankruptcy court by action of a majority of the judges thereof may make and amend rules governing its practice and procedure not inconsistent with these rules. Copies of rules and amendments so made shall on their promulgation be furnished to the Administrative Office of the United States Courts. The clerk of each court shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, for making copies of the rules available to members of the public who may request them. In all cases not provided for by rule, the bankruptcy court may regulate its practice in any manner not inconsistent with these rules.

Rule 9030. Jurisdiction and Venue Unaffected

These rules shall not be construed to extend or limit the jurisdiction of the bankruptcy courts or the venue of any matters therein.

Rule 9031. Masters Not Authorized

Rule 53 F. R. Civ. P. does not apply in cases under the Code.

Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment.

PART X

UNITED STATES TRUSTEES

Rule X-1001. Applicability of Rules

(a) PART X RULES. The rules in Part X apply to cases under the Code filed in or transferred to any district in which a United States trustee is authorized.

(b) INAPPLICABILITY OF RULES. The following rules do not apply in cases under the Code filed in or transferred to any district specified in subdivision (a) of this rule: 2001(a), (c), 2002(a)(1), 2003(a),(b)(1), (2),(d), 2007, 2008, 2009(c), (d), (e), 2010(a), 5008, and the second sentence of 6003.

Rule X-1002. Petitions, Lists, Schedules and Statements

(a) PETITIONS AND ACCOMPANYING MATERIALS.

(1) Number of Copies. In addition to the number of copies required to be filed pursuant to Rules 1002(b), 1003(b) and 1007(f), there shall be filed one copy of the petition, the list of creditors, the schedule of assets and liabilities, the statement of financial affairs, the statement of executory contracts, and the Chapter 13 Statement and any amendments thereto.

(2) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee the additional copies filed pursuant to this subdivision. Written notice of a hearing for an extension of time to file schedules, statements and lists pursuant to Rule 1007(a)(4) shall be given the United States trustee.

(b) FILING LISTS BY DEBTOR IN CHAPTER 11 REORGANIZATION CASES. In chapter 11 cases, the debtor shall file an additional copy of the lists of creditors and of the 20 largest unsecured creditors required by Rule 1007(a) and (d). The lists shall

contain additional information as the United States trustee may require and one copy of each shall be transmitted forthwith by the clerk to the United States trustee.

Rule X-1003. Appointment of Interim Trustee before Order for Relief in a Chapter 7 Liquidation Case

(a) APPOINTMENT. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under § 15303 of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the United States trustee, and other parties in interest as the court may designate.

(b) FORM OF ORDER. The order directing the appointment of an interim trustee shall state why the appointment is necessary and shall specify the trustee's duties.

Rule X-1004. Notification to Trustee of Selection; Blanket Bond

(a) NOTIFICATION. The United States trustee shall immediately notify the trustee of his selection, how he may qualify, and, if applicable, the amount of the bond. The trustee shall give written notification to the court and the United States trustee of the acceptance or rejection of the office within five days after receipt of notice of selection.

(b) BLANKET BOND. The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

Rule X-1005. Trustees for Estates When Joint Administration Ordered

(a) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) Chapter 7 Liquidation Cases. The United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

(2) Chapter 11 Reorganization Cases. If a trustee is ordered, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) Chapter 13 Individual's Debt Adjustment Cases. The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(b) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors of the different estates will be prejudiced by conflicts of interest of a common trustee the court shall order the appointment of separate trustees for estates being jointly administered.

Rule X-1006. Meetings of Creditors or Equity Security Holders

(a) DATE AND PLACE. The United States trustee shall call a meeting of creditors to be held not less than 20 nor more than 40 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later time for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest.

(b) ORDER OF MEETING.

(1) Meeting of Creditors. The United States trustee or his designee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a trustee or of a creditors' committee. The presiding officer shall have the authority to administer oaths.

(2) Meeting of Equity Security Holders. If the court orders a meeting of equity security holders pursuant to § 341(b) of the Code, the United States trustee shall fix a date for the meeting and he or his designee shall preside.

(c) REPORT TO THE COURT. The United States trustee shall transmit to the court the name and address of any person elected trustee or a member of a creditors' committee. If an election is disputed, the presiding officer shall promptly inform the court in writing of the dispute. Pending disposition of the dispute by the court, the interim trustee shall continue in office. If no motion for the resolution of the election dispute is made to the court within ten days after the date of the creditors' meeting, the interim trustee shall serve as trustee in the case.

(d) SPECIAL MEETINGS. The United States trustee may call a special meeting of creditors on application or on his own initiative.

(e) FINAL MEETING. If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed $250, the clerk of the bankruptcy court shall mail a summary of the trustee's final account to the creditors with the notice of the meeting, together with a statement of the amount of the claims allowed. The trustee or his designee shall attend the final meeting and shall, if requested, report on the administration of the estate.

Rule X-1007. Duty of Trustee or Debtor in Possession to Make Reports, Furnish Information, and Cooperate with United States Trustee

(a) DUTY TO FILE INVENTORY. A trustee or debtor in possession shall file the inventory required by Rule 2015(a)(1) with the United States trustee and with the court if the court so directs.

(b) DUTY TO FURNISH INFORMATION TO, AND COOPERATE WITH, UNITED STATES TRUSTEE. The trustee or debtor in possession shall cooperate with the United States trustee by furnishing such information as the United States trustee may reasonably require in supervising the administration of the estate. The trustee or debtor in possession in a chapter 11 reorganization case, and the debtor in a chapter 13 individual's debt adjustment case when the debtor is engaged in business, shall furnish the United States trustee and file with the clerk regular reports of operations as the United States trustee may reasonably require.

Rule X-1008. Notices to United States Trustee

(a) NOTICES TO BE FURNISHED TO UNITED STATES TRUSTEES. Unless the United States trustee otherwise requests, the United States trustee shall receive notice of and pleadings relating to:

(1) the matters described in Rule 2002(a)(2), (5), (7), 2002(b), and (f);

(2) applications for approval of the employment of professional persons under Rule 2014;

(3) applications for compensation of professional persons under Rule 2016;

(4) the hearing to consider a disclosure statement pursuant to Rule 3017;

(5) the hearing on the appointment of a trustee or examiner; and

(6) any other matter notice of which is requested by the United States trustee or ordered by the court.

(b) TIME FOR NOTICE TO UNITED STATES TRUSTEE. Subject to Rule 2002, the United States trustee shall receive notice within sufficient time to permit him to participate in the matter.

(c) UNITED STATES TRUSTEE NEED NOT FURNISH NOTICE. The United States trustee shall not be required to give any notice provided for in Rule 2002(a) or (b).

Rule X-1009. Right to be Heard; Filing Papers

(a) RIGHT TO BE HEARD. The United States trustee may raise and appear and be heard on any issue relating to his responsibilities in a case under the Code.

(b) FILING OF PAPERS. In the interest of effective administration, the court or the United States trustee may require a party in interest to file with the United States trustee a copy of any paper filed with the court.

Rule X-1010. Prohibition of Ex Parte Contacts

The United States trustee, his assistants, and agents shall refrain from ex parte meetings and communications with the bankruptcy judge concerning matters affecting a particular case or proceeding. This rule does not preclude communication with a bankruptcy judge to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.

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EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

I. Rules of Bankruptcy Procedure

The Advisory Committee on Bankruptcy Rules has submitted to your Committee a proposed new set of bankruptcy rules to govern procedure in bankruptcy cases under the new Bankruptcy Code, Title 11, United States Code. The proposed bankruptcy rules are set out in Appendix A and are accompanied by Advisory Committee Notes, a Preface and a report from the Advisory Committee Chairman setting forth the efforts expended in devising new bankruptcy rules and setting forth the public participation in the Committee's work.

In a departure from previous practice Bankruptcy Rule 9009 provides that "Official Forms" are to be prescribed by the Judicial Conference. This procedure will facilitate future forms revision without burdening the Supreme Court and without the normal delay attendant upon rules changes. The "Official Forms" which are recommended for Conference approval under Rule 9009 would become effective when the new bankruptcy rules are adopted.

In approving the proposed bankruptcy rules, and recommending them to the Judicial Conference, your Committee is aware of the decision of the Supreme Court in Northern Pipeline Construction Co. v. Marathon Pipeline Co., dated June 28, 1982. That decision held 28 U.S.C. § 1471, as amended by the Bankruptcy Reform Act of 1978 (P.L. 95-598) unconstitutional because it gave jurisdiction to Article I courts which can only be granted to Article III courts. The Court stayed the effect of its decision until October 4, 1982 to afford Congress the opportunity to enact legislation which would be in accordance with the Court's holding.

Your Committee in consultation with the Advisory Committee on Bankruptcy Rules does not believe the rules are, or will be, seriously affected by the decision or any ensuing legislation. The rules do not expand or reduce the jurisdiction of the bankruptcy courts. It may be necessary, however, to suggest certain technical changes depending on what results from Congressional action. The Committee is of the opinion that any

required changes to the rules would be sufficiently inconsequential that they could be made even while the rules were awaiting promulgation by the Supreme Court. It is felt that any other procedure would delay the effective date of the rules for a full year which would not be in the interest of the bench and bar concerned with this area of practice.

Accordingly, it is recommended that the new bankruptcy rules be approved by the Conference and transmitted to the Supreme Court for its consideration with the recommendation that they be approved by the Court and transmitted to the Congress pursuant to law. It is further recommended that your Committee be authorized to transmit to the Supreme Court any technical amendments to the rules that may be required by legislation enacted by Congress in response to the Northern Pipeline decision. Finally your Committee recommends that the Conference approve the Official Forms to go into effect simultaneously with the bankruptcy rules, and that the forms also be transmitted to the Supreme Court for its information.

APPENDIX A

NEW
BANKRUPTCY RULES
AND
OFFICIAL FORMS

COMMITTEE ON RULES OF PRACTICE
AND PROCEDURE

OF THE

JUDICIAL CONFERENCE OF THE
UNITED STATES

AUGUST 1982

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COMMITTEE ON RULES OF PRACTICE AND PROCEDURE
OF THE
JUDICIAL CONFERENCE OF THE UNITED STATES
WASHINGTON, D.C. 20544

August 9, 1982

Honorable Edward T. Gignoux
Chairman, Committee on Rules of Practice
and Procedure of the Judicial Conference
of the United States
Washington, D.C. 20544

My Dear Judge Gignoux:

On behalf of the Advisory Committee on Bankruptcy Rules, I am pleased to transmit the rules and forms for practice under the Bankruptcy Reform Act of 1978. I am proud of the Committee's work. The challenge that it faced can be measured by the breadth of changes in the substantive law introduced by the new Bankruptcy Code.

The first task assumed and completed by the Advisory Committee was to fill certain gaps between the Code and the existing rules which are to be applied until superseded by the new rules. We drafted a small set of interim rules and forms for use between October 1, 1979, the effective date of the Code, and the promulgation of permanent rules. These interim rules were transmitted to the United States District Courts and Bankruptcy Courts and, for the most part, were adopted as local rules. After completing this project in August, 1979, the Advisory Committee began work on a comprehensive set of new rules.

Similar to the former rules, the rules are divided into parts that correspond to different aspects of bankruptcy procedure. The new rules, however, are not divided into chapters. The old rules are divided into chapters, each governing a different type of debtor relief case. The new rules are drafted to apply to all cases under the Code with variations specifically set forth when necessary.

Part I contains rules relating to the commencement of cases under the Code, to voluntary and involuntary petitions, and to the order for relief following an involuntary petition.

Part II concerns various administrative matters, including appointment and qualification of trustees, employment of professionals by trustees, creditors' meetings, voting, and examination of debtors.

Part III details the form and time for filing claims. It also includes procedures for adopting plans of reorganization under chapter 11 and plans of arrangement under chapter 13 of the Code.

Part IV deals with the debtor's duties and benefits, such as claiming exemptions permitted under the Code and obtaining a discharge from debts.

Part V is general and governs matters unique to the bankruptcy court and its personnel. It contains provisions for filing papers, record keeping, and disqualification of judges.

Part VI contains rules governing various aspects of the collection and disbursement of moneys into and from the estate.

Part VII, entitled "Adversary Proceedings," explicitly adopts most of the Federal Rules of Civil Procedure for litigated matters of a truly adversarial nature, i.e., actions between estates and third parties.

Part VIII covers appeals from bankruptcy courts.

Part IX contains general provisions, including definitions, and specifies the Federal Rules of Civil Procedure applicable to disputed matters commenced other than by complaint under Part VII.

Part X concerns the procedure in the eighteen pilot districts in which a United States trustee has been appointed. (This experimental program will end on April 1, 1984, unless Congress enacts further legislation.)

Official Forms will again go out with the rules, but the Advisory Committee proposes to relieve the Supreme Court of the responsibility for promulgating forms. Instead, we recommend promulgation by the Judicial Conference of the United States. The Advisory Committee has drafted these forms as the representative of the conference.

To draft a complete set of rules to implement the Bankruptcy Reform Act of 1978 has been a monumental task, yet we have managed to complete this assignment in the remarkably short period

of three and a half years. The Committee has held eighteen meetings, each lasting two days. Additionally, several members have met in nine subcommittee meetings of two to three days. Attendance at these meetings has been commendable: with rare exceptions, each member has attended every meeting. In its deliberations, the Committee considered each rule line by line, word for word, as the rule proceeded through several drafts.

The preliminary draft was made available for public comment from March 1, 1982 to August 1, 1982. For those individuals and organizations desiring to make oral comments, public hearings were conducted by our Committee in San Francisco, California on May 13-14, 1982, New York City on June 7-8, 1982, and Chicago, Illinois on June 24-25, 1982.

During the public comment period, we received 99 written comments, and the oral observation of 31 witnesses. In addition to comments from lawyers and individuals we received the suggestions of 11 bar associations, including the American Bar Association, eight governmental agencies, 19 bankruptcy judges, four professional conferences, and five law school professors.

The rules were drafted to accommodate any future amendments by Congress to the jurisdiction of the bankruptcy courts necessitated by Northern Pipeline Construction Co. v. Marathon Pipeline Co., __ U.S.__ (50 U.S.L.W. 4892, June 28, 1982).

Members of the Committee were outstanding. Our bankruptcy judges gave insight and suggestions based on their many years of diverse experience in various parts of the country. I publicly note the perceptive contributions of retired New York City bankruptcy judge, author, and lecturer Asa S. Herzog, known affectionately and deservedly as "Mr. Bankruptcy"; Clive W. Bare of Knoxville, Tennessee, a figure of national esteem who has served the federal government for 43 years, 24 years as a judge; Beryl E. McGuire of Buffalo, New York, who provided insightful views gained from an older metropolitan area; and Alexander L. Paskay of Tampa, Florida, who made vigorous contributions informed by his valuable experience in the rapidly expanding economy of the South. Herbert Katz made us the beneficiaries of his rich experience both as a trial judge in San Diego, California, and as a member of the Ninth Circuit's Appellate Panel of Bankruptcy Judges.

In addition to Professor Lawrence P. King of New York University School of Law, chief reporter to the Committee, academe was well represented by Professor Robert W. Foster,

former dean of the University of South Carolina Law School, and by Professor Walter J. Taggart of Villanova Law School, our co-reporter, who had served many years as a special law clerk to the reorganization judge in the prodigious Penn Central bankruptcy proceedings and who was a faithful and exemplary research resource to the committee.

The practicing bar was ably represented by outstanding lawyers: Norman Nachman, one of America's most highly regarded bankruptcy specialists, of Nachman, Munitz & Sweig, Chicago; Joseph Patchan of Baker & Hostetler, Cleveland, who combined a practitioner's valuable perspective with past bankruptcy judge experience; and Charles Horsky of Covington & Burling, Washington, D.C., one of this nation's most distinguished trial and appellate lawyers and current president of the National Bankruptcy Conference. Through much of his service with our committee, Richard L. Levine, of Hill & Barlow, Boston, was the first executive director of the Department of Justice's United States Trustee program. He constantly briefed us on the particulars of the experimental program.

Morey L. Sear of New Orleans not only shared his impressive experience as a district judge and a former United States magistrate, but also coordinated the Committee's work with the Federal Rules of Civil Procedure. In addition, I am grateful for his profound talent and generosity in assuming numerous administrative responsibilities on my behalf. John T. Copenhaver of Charleston, West Virginia, gave us the benefit of his present role as a district judge and his previous service as a bankruptcy judge.

Although the work is the cumulative product of the entire committee, I publicly acknowledge the monumental contribution of our chief reporter, Professor Lawrence P. King. I publicly pay tribute to his scholarship; to his unlimited capacity for meticulous research; to his unfailing energy; to his rare capacity of viewing a problem from the perspective of academic, author, editor and practitioner; and his unfailing good humor.

I thank you Judge Gignoux, for wise counsel and generous assistance.

Finally, the work of the committee could not have been performed effectively and our self-imposed deadlines could not have been met without the indispensable cooperation and services provided by Joseph F. Spaniol, Jr., Deputy Director of the Administrative Office of the United States Courts, who serves as

the Secretary of the standing committee. His faithful attendance at our meetings is much appreciated, as is his thoughtfulness in providing a capable and conscientious staff, headed by Ms. Barbara Nordberg, to attend to our needs.

Respectfully submitted,

Ruggero J. Aldisert,
United States Circuit Judge
Pittsburgh, Pennsylvania
Chairman, Advisory Committee
on Bankruptcy Rules

PREFACE

The Advisory Committee on Bankruptcy Rules was newly constituted as of January 1, 1979 in response to the enactment of Public Law 95-598, generally effective October 1, 1979, unofficially called the Bankruptcy Reform Act of 1978. It repealed the former Bankruptcy Act of 1898 and replaced that Act with a codified bankruptcy law in title 11 U.S.C. (the "Code").

Section 405(d) of Public Law 95-598 provides that the existing bankruptcy rules not inconsistent with the Bankruptcy Code remain in effect until repealed or superseded by new rules promulgated pursuant to 28 U.S.C. § 2075, as amended. Section 247 of Public Law 95-598 amends 28 U.S.C. § 2075 to require that rules promulgated thereunder be consistent with the Code. The rules are consistent with the Code and do not change any procedural provisions contained therein. The rules are also designed to adapt to amendments to the Code by Congress necessitated by Northern Pipeline Construction Co. v. Marathon Pipeline Co., ___ U.S. ___ (50 U.S.L.W. 4892, June 28, 1982).

The scope of the rules and forms is set forth in Rule 1001. The format is similar to that of the prior rules promulgated by the Supreme Court on varying dates between 1973 and 1976. They are divided into ten parts with titles indicating the subject matter of the rules grouped in each part. The proposed rules, however, are not divided into chapters related to the different types of debtor relief chapters in the Code. These rules apply in all chapter cases except as a particular rule otherwise provides.

Part X of these rules pertains only to the pilot districts in which a United States trustee is serving. Pursuant to § 408(c) of Public Law 95-598, the pilot program established by chapter 39 of 28 U.S.C. terminates as of April 1, 1984 unless further legislation is enacted by Congress. If this legislation is not enacted, Part X can be repealed without affecting the other rules.

SIGNIFICANT PROVISIONS OF THE PROPOSED RULES

In many respects the rules contain provisions similar to those in the former rules. Necessarily there are differences occasioned by changes made by the Code and there are provisions for the new matters. Some rules contain provisions different from those in the former rules because of changes occurring in the practice in the bankruptcy courts. Some of the significant provisions follow:

(1) Rule 1007(d) requires a debtor in a chapter 9 or 11 case to file a list of its 20 largest unsecured creditors with the petition. This will assist the court in expediting appointment of a creditors' committee as required by § 1102 of the Code.

(2) Rule 2003(b)(1) provides that the clerk of the bankruptcy court is to preside at the meeting of creditors unless the court designates another person or one is elected by creditors. Section 341(c) of the Code changes former practice and does not permit the judge to preside at the meeting.

(3) Rule 2003(b)(3) requires that a creditor desiring to vote at the meeting of creditors have either a proof of claim or some writing evidencing a right to vote. The rule provides the procedure for the holder of an allowable claim to vote and is designed to eliminate disputes at meetings by requiring some evidence of creditor status.

(4) Rule 2006, which regulates solicitation of proxies, applies only in chapter 7 cases because creditors may vote for a trustee or committee only in those cases.

(5) Rule 2007 provides a procedure for the appointment of a pre-petition committee as the statutory committee in a chapter 11 case.

(6) Rule 2013 which regulates the appointment of trustees and examiners was first included in the Suggested Interim Rules.

(7) Rule 2018(b) provides a new procedure and permits a state's Attorney General to appear subject to court approval on behalf of consumer creditors.

(8) Rule 3001 pertains to the form of the proof of claim; Rule 3002 pertains to all matters regarding its filing.

The time for filing claims in chapter 7 and 13 cases is reduced to 90 days after the first date set for the meeting of creditors. The Advisory Committee believes that six months is unnecessarily long.

(9) Rule 3003 provides the procedure and time for filing claims under § 1111(a) of the Code.

(10) Rule 3014 fixes the time within which a secured creditor may elect to hold a nonrecourse claim pursuant to § 1111(b). The

election may be made prior to the conclusion of the hearing on the disclosure statement or within a later time as the court may fix.

(11) Rule 3017 fixes the procedure for the hearing on the disclosure statement. Prior to the hearing the statement will be transmitted to the debtor, trustee, appointed committee, SEC and any party in interest requesting a copy. After its approval, the statement is transmitted to all parties whose votes are being solicited. Rule 3017(d).

(12) Rule 3020 requires that the consideration to be distributed upon confirmation of a chapter 11 plan be deposited with the trustee or debtor in possession. The Code is silent with respect to any pre-confirmation deposit.

(13) Rule 4001(a) provides that relief from the automatic stay pursuant to § 362 shall be initiated by motion.

Rule 4001(b) continues the well accepted proposal in the Suggested Interim Rules that there be a deadline imposed on the court to conclude the final hearing on a motion for relief from the automatic stay.

(14) Rule 4003(d) prescribes that the procedure avoiding a lien under § 522(f) of the Code is by motion, thus eliminating resort to the existing more formal adversary proceeding practice.

(15) Rules 4004(a) and 4007(c) provide a uniform deadline for filing complaints objecting to discharge and to determine the nondischargeability of certain debts. Former practice permitted each judge to fix a date but the Advisory Committee believes that a uniform standard is preferable.

(16) Rule 5002 governs prohibited appointments and now includes examiners within its scope. The rule is adapted from former Rule 505(a).

(17) Rule 6004(c) permits a more expeditious procedure for the sale of estate property having little value. A general notice of intention to sell will suffice and absent timely objection, the sale may take place.

(18) Pursuant to § 554 of the Code, property of the estate may be abandoned. Rule 6007 provides the procedure for abandonment.

SPECIAL CONSIDERATIONS

A. Special Masters

While Parts VII and IX together incorporate many of the Federal Rules of Civil Procedure, the proposed rules do not make Rule 53 applicable in cases under the Code. Former Bankruptcy Rule 513 provided:

> If a reference is made in a bankruptcy case by a judge to a special master, the Federal Rules of Civil Procedure applicable to masters apply.

The word "judge" meant the United States district judge, not the bankruptcy judge. See § 1(20) of the Act; former Bankruptcy Rule 901. Accordingly, former Rule 513 generally applied only when a Chapter X case was retained by the district judge although it probably would apply when a district judge removed any case from the bankruptcy court to the district court. See former Rule 102(b).

There does not appear to be any need for the appointment of special masters in bankruptcy cases by bankruptcy judges. The Advisory Committee, therefore, has decided that former Rule 513 not be continued in the rules and that Rule 53 F.R.Civ.P. not be made applicable. See Rule 9031.

B. Adversary Proceedings - Part VII

The concept of adversary proceedings is continued in Part VII of the proposed rules with some changes.

Initially, former Rule 704 permitted that service by registered mail could displace personal service. In 1976, the rule was amended to permit service by first class mail because process could be avoided by nonacceptance of registered mail. The Advisory Committee decided to retain this manner of service in Rule 7004 and in addition permit service as provided in Rule 4 F.R.Civ.P.

C. Appeals - Part VIII

Because of the statutory changes made in the appellate process, the Part VIII Rules contain provisions not found in the former rules. For example, the procedure for appeals as of right and motions for leave to appeal is specified in Rule 8001(a) and 8003. The effect of taking a direct appeal by agreement to the United States Court of Appeals on a previously filed notice of appeal is set forth in Rule 8001(d).

D. General Provisions - Part IX

The rules in Part IX cover matters which are general in nature and apply in contested matters, adversary proceedings and other aspects of cases under the Code.

Rule 9003 prohibits ex parte contact with the judge unless otherwise permitted by law. This proscription was included in the Suggested Interim Rules.

Rule 9015 contains jury trial provisions and is adapted from Rules 38 and 39 F.R.Civ.P. There is a greater possibility for jury trials under the Code than under the Act. See 28 U.S.C. § 1480(a).

Rule 9027 implements 28 U.S.C. § 1478(a) which is new and permits removal of a claim or cause of action to the bankruptcy court. The rule conforms substantially to 28 U.S.C. §§ 1446-1450 and Rule 81(a) F.R.Civ.P. in providing the procedure for removal.

As under the former rules, local rules may be adopted which are not inconsistent with the Code or the rules promulgated by the Supreme Court. Rule 9029 delegates this authority to the bankruptcy courts.

OFFICIAL FORMS

Rule 9009 provides that official forms will be prescribed by the Judicial Conference of the United States. In essence, it is contemplated that the official forms, such as those prepared by the Advisory Committee and appended to these rules, will be prescribed by the Judicial Conference. The Advisory Committee on Bankruptcy Rules will be the representative of the Judicial Conference in the drafting of the forms.

ADVISORY COMMITTEE ON BANKRUPTCY RULES

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Rule 1001. Scope of Rules and Forms; Short Title

The Bankruptcy Rules and Forms govern procedure in United States Bankruptcy Courts in cases under chapters 7, 9, 11 and 13 of title 11 of the United States Code. The rules shall be cited as the Bankruptcy Rules and the forms as the Official Bankruptcy Forms. These rules shall be construed to secure the expeditious and economical administration of every case under the Code and the just, speedy, and inexpensive determination of every proceeding therein.

ADVISORY COMMITTEE NOTE

Section 247 of Public Law 95-598, 92 Stat. 2549 amended 28 U.S.C. § 2075 by omitting the last sentence. The effect of the amendment is to require that procedural rules promulgated pursuant to 28 U.S.C. § 2075 be consistent with the bankruptcy statute, both titles 11 and 28 U.S.C. Thus, although Rule 1001 sets forth the scope of the bankruptcy rules and forms, any procedural matters contained in title 11 or 28 U.S.C. with respect to cases filed under 11 U.S.C. would control. See 1 Collier, Bankruptcy ¶ 3.04 [2][c] (15th ed. 1980).

28 U.S.C. § 151 establishes a Unites States Bankruptcy Court in each district as an adjunct to the district court. This provision does not, however, become effective until April 1, 1984. Public Law 95-598, § 402(b). From October 1, 1979 through March 31, 1984, the courts of bankruptcy as defined in § 1(10) of the Bankruptcy Act, and created in § 2a of that Act continue to be the courts of bankruptcy. Public Law 95-598, § 404(a). From their effective date these rules and forms are to be applicable in cases filed under chapters 7, 9, 11 and 13 of title 11 regardless of whether the court is established by the Bankruptcy Act or by 28 U.S.C. § 151. Rule 9001 contains a broad and general definition of "bankruptcy court," "court" and "United States Bankruptcy Court" for this purpose.

"Bankruptcy Code" or "Code" as used in these rules means title 11 of the United States Code, the codification of the bankruptcy law. Public Law 95-598, § 101. See Rule 9001.

"Bankruptcy Act" as used in the notes to these rules means the Bankruptcy Act of 1898 as amended which was repealed by § 401(a) of Public Law 95-598.

These rules apply to all cases filed under the Code except as otherwise specifically stated.

The final sentence of the rule is derived from former Bankruptcy Rule 903. The objective of "expeditious and economical administration" of cases under the Code has frequently been recognized by the courts to be "a chief purpose of the bankruptcy laws." See Katchen v. Landy, 382 U.S. 323, 328 (1966); Bailey v. Glover, 88 U.S. (21 Wall.) 342, 346-47 (1874); Ex parte Christy, 44 U.S. (3 How.) 292, 312-14, 320-22 (1845). The rule also incorporates the wholesome mandate of the last sentence of Rule 1 of the Federal Rules of Civil Procedure. 2 Moore, Federal Practice ¶ 1.13 (2d ed. 1980); 4 Wright & Miller, Federal Practice and Procedure-Civil § 1029 (1969).

PART I

COMMENCEMENT OF CASE; PROCEEDINGS RELATING TO PETITION AND ORDER FOR RELIEF

Rule 1002. Voluntary Petition

(a) COMMENCEMENT. A debtor's petition commencing a voluntary case shall be filed with the bankruptcy court and shall conform substantially to Official Form No. 1.

(b) NUMBER OF COPIES.

(1) Chapter 7 Liquidation and Chapter 13 Adjustment of Debts of an Individual with Regular Income. An original and one copy of a petition requesting relief under chapter 7 or chapter 13 of the Code shall be

filed, but additional copies may be required by local rule. If a stockbroker's petition for relief under subchapter III of chapter 7 is filed, an additional copy shall be filed and transmitted by the clerk to the Securities Investor Protection Corporation. If a commodity broker's petition for relief under subchapter IV of chapter 7 is filed, an additional copy shall be filed and transmitted by the clerk to the Commodity Futures Trading Commission.

(2) Chapter 9 Adjustment of Debts of a Municipality and Chapter 11 Reorganization. An original and five copies of a petition requesting relief under chapter 9 or chapter 11 of the Code shall be filed, but additional copies may be required by local rule. The clerk shall transmit one copy to the District Director of Internal Revenue for the district in which the case is filed, one copy of a chapter 9 petition to the Secretary of State of the state in which the debtor is located, two copies of a chapter 9 petition to the Securities and Exchange Commission and, if the debtor is a corporation, two copies of a chapter 11 petition to the Securities and Exchange Commission. If the petition requests relief for the reorganization of a railroad under subchapter IV of

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chapter 11 of the Code, two additional copies of the petition shall be filed, and the clerk shall transmit one copy to the Interstate Commerce Commission and one copy to the Secretary of Transportation.

ADVISORY COMMITTEE NOTE

Under §§ 301-303 of the Code, a voluntary or involuntary case is commenced by filing a petition with the bankruptcy court. The voluntary petition may request relief under chapter 7, 9, 11, or 13 whereas an involuntary petition may be filed only under chapter 7 or 11. Section 109 of the Code specifies the types of debtors for whom the different forms of relief are available and § 303 (a) indicates the persons against whom involuntary petitions may be filed.

The rule in subdivision (a) is in harmony with the Code in that it requires the filing to be with the bankruptcy court.

The number of copies of the petition to be filed is specified in this rule but a local rule may require additional copies. This rule provides for filing sufficient copies for the court's files and for the trustee in a chapter 7 or 13 case.

Official Form No. 1 may be used to seek relief voluntarily under any of the chapters. Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). As provided in § 362(a) of the Code, the filing of a petition acts as a stay of certain acts and proceedings against the debtor, property of the debtor, and property of the estate.

Rule 1003. Involuntary Petition; Case Ancillary to Foreign Proceeding

(a) COMMENCEMENT. A petition commencing an involuntary case shall be filed with the bankruptcy court and shall conform substantially to Official Form No. 11.

(b) NUMBER OF COPIES. The number and distribution of copies shall be as specified in Rule 1002.

(c) TRANSFEROR OR TRANSFEREE OF CLAIM. A transferor or transferee of a claim shall annex to the original and each copy of the petition a copy of all documents evidencing the transfer, whether transferred unconditionally, for security, or otherwise, and a signed statement that the claim was not transferred for the purpose of commencing the case and setting forth the consideration for and terms of the transfer. A person who has transferred or acquired a claim for the purpose of commencing a case for liquidation under chapter 7 or for reorganization under chapter 11 shall not be a qualified petitioner.

(d) JOINDER OF PETITIONERS AFTER FILING. If the answer to an involuntary petition filed by fewer than three creditors avers the existence of 12 or more creditors, the debtor shall file with the answer a list of all creditors with their addresses, a brief statement of the nature of their claims, and the amounts thereof. If it appears that there are 12 or more creditors as provided in § 303(b) of the Code, the court shall afford a reasonable opportunity for other creditors to join in the petition before a hearing is held thereon.

(e) CASE ANCILLARY TO FOREIGN PROCEEDING.

(1) Petition; Number of Copies. An original and one copy of a petition commencing a case ancillary to a foreign proceeding shall be filed with the bankruptcy court.

(2) Service of Petition and Summons. On the filing of a petition pursuant to the preceding paragraph, the clerk shall forthwith issue a summons for service on all parties against whom relief is sought pursuant to § 304(b) of the Code and on such other parties as the court may direct. Rule 1010 applies to the manner of service of the summons and petition.

(3) Responsive Pleadings and Motions. Rule 1011(a), (b), (c) and (e) applies to responsive pleadings and motions.

(4) Contested Petition. Rule 1018 applies when a petition filed under this rule is contested.

ADVISORY COMMITTEE NOTE

Subdivision (a). Official Form No. 11 (Involuntary Case: Creditors' Petition), is prescribed for use by petitioning creditors to have a debtor's assets liquidated under chapter 7 of the Code or the business reorganized under chapter 11. It contains the required allegations as specified in § 303(b) of the Code. Official Form 12 is prescribed for use by fewer than all the general partners to obtain relief for the partnership as governed by § 303(b) (3) of the Code and Rule 1004(b).

Although the number of copies to be filed is specified in Rule 1002, a local rule may require additional copies.

Only the original need be signed and verified, but the copies must be conformed to the original. See Rules 1008 and 9011(c). The petition must be filed with the bankruptcy court. This provision implements § 303(b) which provides that an involuntary case is commenced by filing the petition with the court.

As provided in § 362 of the Code, the filing of the petition acts as a stay of certain acts and proceedings against the debtor, the debtor's property and property of the estate.

Subdivision (c) retains the explicitness of former Bankruptcy Rule 104(d) that a transfer of a claim for the purpose of commencing a case under the Code is a ground for disqualification of a party to the transfer as a petitioner.

Section 303(b) "is not intended to overrule Bankruptcy Rule 104(d), which places certain restrictions on the transfer of claims for the purpose of commencing an involuntary case." House Report No. 95-595, 95th Cong., 1st Sess. (1977) 322; Senate Report No. 95-989, 95th Cong., 2d Sess. (1978) 33.

The subdivision requires disclosure of any transfer of the petitioner's claim as well as a transfer to the petitioner and applies to transfers for security as well as unconditional transfers. Cf. In re 69th & Crandon Bldg. Corp., 97 F.2d 392, 395 (7th Cir.), cert. denied, 305 U.S. 629 (1938), recognizing the right of a creditor to sign a bankruptcy petition notwithstanding a prior assignment of his claim for the purpose of security. This rule does not, however, qualify the requirement of § 303(b) (1) that a petitioning creditor must have a claim not contingent as to liability.

Subdivision (d). Section 303(c) of the Code permits a creditor to join in the petition at any time before the case is dismissed or relief is ordered. While this rule does not require the court to give all creditors notice of the petition, the list of creditors filed by the debtor affords a petitioner the information needed to enable him to give notice for the purpose of obtaining the co-petitioners required to make the petition sufficient. After a reasonable opportunity has been afforded other creditors to join in an involuntary petition, the hearing on the petition should be held without further delay.

Subdivision (e). This subdivision implements § 304. A petition for relief under § 304 may only be filed by a foreign representative

best copy available

who is defined in § 101(20) generally as a representative of an estate in a foreign proceeding. The term "foreign proceeding" is defined in § 101(19).

Section 304(b) permits a petition filed thereunder to be contested by a party in interest. Subdivision (e)(2) therefore requires that the summons and petition be served on any person against whom the relief permitted by § 304(b) is sought as well as on any other party the court may direct.

The rules applicable to the procedure when an involuntary petition is filed are made applicable generally when a case ancillary to a foreign proceeding is commenced. These rules include Rule 1010 with respect to issuance and service of a summons, Rule 1011 concerning responsive pleadings and motions, and Rule 1018 which makes various rules in Part VII applicable in proceedings on contested petitions.

The venue for a case ancillary to a foreign proceeding is provided in 28 U.S.C. § 1474.

Rule 1004. Partnership Petition

(a) VOLUNTARY PETITION. A voluntary petition may be filed on behalf of the partnership by one or more general partners if all general partners consent to the petition.

(b) INVOLUNTARY PETITION; NOTICE AND SUMMONS. After filing of an involuntary petition under § 303(b)(3) of the Code, (1) the petitioning partners or other petitioners shall cause forthwith a copy of the petition to be sent to or served on each general partner who is not a petitioner; and (2) the clerk shall issue forthwith a summons for service on each general partner who is not a petitioner. Rule 1010 applies to the form and service of the summons.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rule 105 and complements §§ 301 and 303(b) (3) of the Code.

Subdivision (a) specifies that while all general partners must consent to the filing of a voluntary petition, it is not necessary that they all execute the petition. It may be executed and filed on behalf of the partnership by fewer than all.

Subdivision (b) implements § 303(b) (3) of the Code which provides that an involuntary petition may be filed by fewer than all the general partners or, when all the general partners are debtors, by a general partner, trustee of the partner or creditors of the partnership. Rule 1010, which governs service of a petition and summons in an involuntary case, specifies the time and mode of service on the partnership. When a petition is filed against a partnership under § 303(b)(3), this rule requires an additional service on the nonfiling general partners. It is the purpose of this subdivision to protect the interests of the nonpetitioning partners and the partnership.

Rule 1005. Caption of Petition

The caption of a petition commencing a case under the Code shall contain the name of the court, the title of the case, and the docket number. The title of the case shall include the name, social security number and employer's tax identification number of the debtor and all other names used by the debtor within six years before filing the petition. If the petition is not filed by the debtor, it shall include all names known to petitioners used by the debtor.

ADVISORY COMMITTEE NOTE

The title of the case should include all names used by the debtor, such as trade names, former married names and maiden

name. See also Official Form No. 1 and the Advisory Committee Note to that Form. Additional names of the debtor are also required to appear in the caption of each notice to creditors. See Rule 2002(m).

Rule 1006. Filing Fee

(a) GENERAL REQUIREMENT. Every petition shall be accompanied by the prescribed filing fee except as provided in subdivision (b) of this rule.

(b) PAYMENT OF FILING FEE IN INSTALLMENTS.

(1) Application for Permission to Pay Filing Fee in Installments. A voluntary petition by an individual shall be accepted for filing if accompanied by the debtor's signed application stating that he is unable to pay the filing fee except in installments. The application shall state the proposed terms of the installment payments and that the applicant has neither paid any money nor transferred any property to an attorney for services in connection with the case.

(2) Action on Application. Prior to the meeting of creditors, the court may order the filing fee paid to the clerk or grant leave to pay in installments and fix the number, amount and dates thereof. The number of installments shall not exceed four, and the final installment shall be payable not later than 120 days after

filing the petition. For cause shown, the court may extend the time of any installment, provided the last installment is paid not later than 180 days after filing the petition.

(3) Postponement of Attorney's Fees. The filing fee must be paid in full before the debtor may pay an attorney for services in connection with the case.

ADVISORY COMMITTEE NOTE

28 U.S.C. § 1930 specifies the filing fees for petitions under chapters 7, 9, 11 and 13 of the Code. It also permits the payment in installments by individual debtors.

Subdivision (b) is adapted from former Bankruptcy Rule 107. The administrative cost of installments in excess of four is disproportionate to the benefits conferred. Prolonging the period beyond 180 days after the commencement of the case causes undesirable delays in administration. Paragraph (2) accordingly continues the imposition of a maximum of four on the number of installments and retains the maximum period of installment payments allowable on an original application at 120 days. Only in extraordinary cases should it be necessary to give an applicant an extension beyond the four months. The requirement of paragraph (3) that filing fees be paid in full before the debtor may pay an attorney for services in connection with the case codifies the rule declared in In re Latham, 271 Fed. 538 (N.D.N.Y. 1921), and In re Darr, 232 Fed. 415 (N.D. Cal. 1916).

Rule 1007. Lists, Schedules and Statements; Time Limits

(a) LIST OF CREDITORS AND EQUITY SECURITY HOLDERS.

(1) Voluntary Case. In a voluntary case, the debtor shall file with the petition a list containing the name and

address of each creditor unless the petition is accompanied by a schedule of liabilities or a Chapter 13 Statement.

(2) Involuntary Case. In an involuntary case, the debtor shall file within 15 days after entry of the order for relief, a list containing the name and address of each creditor unless a schedule of liabilities has been filed.

(3) Equity Security Holders. In a chapter 11 reorganization case, a list of the debtor's equity security holders of each class showing the number and kind of interests registered in the name of each holder, and the last known address or place of business of each holder, shall be filed by the debtor within 15 days after entry of the order for relief unless the court orders otherwise.

(4) Extension of Time. Any extension of time for the filing of the lists required by this subdivision may be granted only on motion for cause shown and on notice to any trustee, committee appointed under the Code, or other party as the court may direct.

(b) SCHEDULES AND STATEMENTS REQUIRED. The debtor in a chapter 7 liquidation case or chapter 11 reorganization case shall file with the court schedules of assets and liabilities, a statement of financial affairs, and a

statement of executory contracts, prepared as prescribed by Official Forms No. 6 and either No. 7 or No. 8, whichever is appropriate, unless the court orders otherwise. The debtor in a chapter 13 individual's debt adjustment case shall file with the court a Chapter 13 Statement conforming to Official Form No. 10 and, if the debtor is engaged in business, a statement of financial affairs prepared as prescribed by Official Form No. 8.

(c) TIME LIMITS. The schedule and statements, if not previously filed in a pending case, shall be filed with the petition in a voluntary case, or if the petition is accompanied by a list of all the debtor's creditors and their addresses, within 15 days thereafter, except as otherwise provided in subdivisions (d), (e) and (h) of this rule. In an involuntary case the schedules and statements shall be filed by the debtor within 15 days after entry of the order for relief. In a case converted from chapter 11 or chapter 13 to a chapter 7 case, the list of all the debtor's creditors, a schedule of assets and liabilities, a statement of financial affairs and a statement of executory contracts shall be filed by the debtor or other person directed by the court, within 15 days after the entry of the order of conversion. Any extension of time for the filing of the schedules and statements may be granted only on

motion for cause shown and on notice to any committee, trustee, examiner or other party as the court may direct.

(d) LIST OF 20 LARGEST CREDITORS IN CHAPTER 9 MUNICIPALITY CASE OR CHAPTER 11 REORGANIZATION CASE. In addition to the list required by subdivision (a) of this rule, a debtor in a chapter 9 municipality case or a debtor in a voluntary chapter 11 reorganization case shall file with the petition a list containing the name, address and claim of the creditors that hold the 20 largest unsecured claims, excluding insiders, as prescribed by Official Form No. 9. In an involuntary chapter 11 reorganization case, such list shall be filed by the debtor within 2 days after entry of the order for relief under § 303(h) of the Code.

(e) LIST IN CHAPTER 9 MUNICIPALITY CASES. The list required by subdivision (a) of this rule shall be filed by the debtor in a chapter 9 municipality case within such time as the court shall fix. If a proposed plan requires a revision of assessments so that the proportion of special assessments or special taxes to be assessed against some real property will be different from the proportion in effect at the date the petition is filed, the debtor shall also file with the court a list showing the name and address of each known holder of title, legal or equitable, to real property adversely affected. On

motion for cause shown, the court may modify the requirements of this subdivision and subdivision (a) of this rule.

(f) NUMBER OF COPIES. The number of copies of the schedules, statements and lists shall correspond to the number of copies of the petition required by Rules 1002 and 1003.

(g) PARTNERSHIP AND PARTNERS. The general partners of a debtor partnership shall prepare and file the schedules of the assets and liabilities, statement of financial affairs, and statement of executory contracts of the partnership. The court may order any general partner to file a statement of personal assets and liabilities with the court within such time as the court may fix.

(h) INTERESTS ACQUIRED OR ARISING AFTER PETITION. Within ten days after the information comes to the debtor's knowledge or within such further time as the court may allow, the debtor in a chapter 7 liquidation case, chapter 11 reorganization case, or chapter 13 individual debt adjustment case shall file a supplemental schedule with respect to any property that the debtor acquires or becomes entitled to acquire within 180 days after the date of the filing of the petition (1) by bequest, devise or inheritance; (2) as a

result of a property settlement agreement with the debtor's spouse, or of an interlocutory or final divorce decree; or (3) as a beneficiary of a life insurance policy or of a death benefit plan. If any of the property required to be reported under this subdivision is claimed by the debtor as exempt, the debtor shall claim the exemptions in the supplemental schedule. The duty to file a supplemental schedule in accordance with this subdivision continues notwithstanding the closing of the case before the duty is or can be performed, except that the schedule need not be filed in a chapter 11 or chapter 13 case with respect to property acquired after entry of the order confirming the plan.

(i) DISCLOSURE OF LIST OF SECURITY HOLDERS. After notice and hearing and for cause shown, the court may direct an entity other than the debtor or trustee to disclose any list of security holders of the debtor in its possession or under its control, indicating the name, address and security held by any of them. The entity possessing this list may be required either to produce the list or a true copy thereof, or permit inspection or copying, or otherwise disclose the information contained on the list.

(j) IMPOUNDING OF LISTS. On motion of a party in interest and for cause shown the court may direct the

impounding of the lists filed under this rule, and may refuse to permit inspection by any entity. The court may permit inspection or use of the lists, however, by any party in interest on terms prescribed by the court.

(k) PREPARATION OF LIST, SCHEDULES, OR STATEMENTS ON DEFAULT OF DEBTOR. If a list, schedule, or statement is not prepared and filed as required by this rule, the court may order the trustee, a petitioning creditor, committee, or other party to prepare and file any of these papers within a time fixed by the court. The court may approve reimbursement of the cost incurred in complying with such an order as an administrative expense.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of former Rules 108, 8-106, 10-108 and 11-11. As specified in the rule, it is applicable in all types of cases filed under the Code.

Subdivision (a) requires at least a list of creditors with their names and addresses to be filed with the petition. This list is needed for notice of the meeting of creditors (Rule 2002) and notice of the order for relief (§ 342 of the Code). The list will also serve to meet the requirements of § 521(1) of the Code. Subdivision (a) recognizes that it may be impossible to file the schedules required by § 521(1) and subdivision (b) of the rule at the time the petition is filed but in order for the case to proceed expeditiously and efficiently it is necessary that the clerk have the names and addresses of creditors. It should be noted that subdivision (d) of the rule requires a special list of the 20 largest unsecured creditors in chapter 9 and 11 cases. That list is for the purpose of selecting a committee of unsecured creditors.

Subdivision (b) is derived from former Rule 11-11 and conforms with § 521. This subdivision indicates the forms to be used. The court may dispense with the filing of schedules and the statement of affairs pursuant to § 521.

Subdivisions (e) and (f) specify the time periods for filing the papers required by the rule as well as the number of copies. The provisions dealing with an involuntary case are derived from former Bankruptcy Rule 108. Under the Code, a chapter 11 case may be commenced by an involuntary petition (§ 303(a)), whereas under the Act, a Chapter XI case could have been commenced only by a voluntary petition. A motion for an extension of time to file the schedules and statements is required to be made on notice to parties, as the court may direct, including a creditors' committee if one has been appointed under § 1102 of the Code and a trustee or examiner if one has been appointed pursuant to § 1104 of the Code. Although written notice is preferable, it is not required by the rule; in proper circumstances the notice may be by telephone or otherwise.

Subdivision (d) is new and requires that a list of the 20 largest unsecured creditors, excluding insiders as defined in § 101(25) of the Code, be filed with the petition. The court, pursuant to § 1102 of the Code, is required to appoint a committee of unsecured creditors as soon as practicable after the order for relief. That committee generally is to consist of the seven largest unsecured creditors who are willing to serve. The list should, as indicated on Official Form No. 9, specify the nature and amount of the claim. It is important for the court to be aware of the different types of claims existing in the case and this form should supply such information.

Subdivision (e) applies only in chapter 9 municipality cases. It gives greater discretion to the court to determine the time for filing a list of creditors and any other matter related to the list. A list of creditors must at some point be filed since one is required by § 924 of the Code. When the plan affects special assessments, the definitions in § 902(2) and (3) for "special tax payer" and "special tax payer affected by the plan" become relevant.

Subdivision (g) is derived from former Rules 108(c) and 11-11. Nondebtor general partners are liable to the partnership's trustee for any deficiency in the partnership's estate to pay creditors in full as provided by § 723 of the Code. Subdivision (g) authorizes the court to require a partner to file a statement of personal assets and liabilities to provide the trustee with the relevant information.

Subdivision (h) is derived from former Bankruptcy Rule 108(e) for chapter 7, 11 and 13 purposes. It implements the provisions in and language of § 541(a)(5) of the Code.

Subdivisions (i) and (j) are adapted from §§ 165 and 166 of the Act and former Rule 10-108(b) and (c) without change in substance. The term "party in interest" is not defined in the Code or the rules, but reference may be made to § 1109(b) of the Code. In the context of this subdivision, the term would include the debtor, the trustee, any indenture trustee, creditor, equity security holder or committee appointed pursuant to § 1102 of the Code.

Subdivision (k) is derived from former Rules 108(d) and 10-108(a).

Rule 1008. Verification of Petitions and Accompanying Papers

All petitions, lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto shall be verified or contain an unsworn declaration as provided in 28 U.S.C. § 1746.

ADVISORY COMMITTEE NOTE

This rule retains the requirement under the Bankruptcy Act and rules that petitions and accompanying papers must be verified. Only the original need be signed and verified, but the copies must be conformed to the original. See Rule 9011(c).

The verification may be replaced by an unsworn declaration as provided in 28 U.S.C. § 1746. See also, Official Form No. 1 and Advisory Committee Note.

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Rule 1009. Amendments of Voluntary Petitions, Lists, Schedules and Statements of Financial Affairs

A voluntary petition, list, schedule, statement of financial affairs, statement of executory contracts, or Chapter 13 Statement may be amended by the debtor as a matter of course at any time before the case is closed. The debtor shall give notice of the amendment to the trustee and to any entity affected thereby. On motion of a party in interest, the court may order any voluntary petition, list, schedule, statement of financial affairs, statement of executory contracts, or Chapter 13 Statement to be amended and the clerk shall give notice of the amendment to entities designated by the court. The amendment shall be filed in the same number as required of the original.

ADVISORY COMMITTEE NOTE

This rule continues the permissive approach adopted by former Bankruptcy Rule 110 to amendments of voluntary petitions and accompanying papers. Notice of any amendment is required to be given to the trustee. This is particularly important with respect to any amendment of the schedule of property affecting the debtor's claim of exemptions. Notice of any amendment of the schedule of liabilities is to be given to any creditor whose claim is changed or newly listed.

The rule does not continue the provision permitting the court to order an amendment on its own initiative. Absent a request in some form by a party in interest, the court should not be involved in administrative matters affecting the estate.

If a list or schedule is amended to include an additional creditor, the effect on the dischargeability of the creditor's claim is governed by the provisions of § 523(a) (3) of the Code.

Rule 1010. Service of Involuntary Petition and Summons

On the filing of an involuntary petition, the clerk shall issue forthwith a summons for service on the debtor. The summons shall conform to Official Form No. 13 and a copy shall be served with a copy of the petition in the manner provided for service of a summons and complaint by Rule 7004(a) or (b). If service cannot be so made, the court may order the summons and petition to be served by mailing copies to the debtor's last known address, and by at least one publication in the manner and form directed by the court. The summons and petition may be served on the debtor anywhere. Rule 7004(f) and Rule 4(g) and (h) F. R. Civ. P. apply when service is made or attempted under this rule.

ADVISORY COMMITTEE NOTE

This rule provides the procedure for service of the involuntary petition and summons. It does not deal with service of a summons and complaint instituting an adversary proceeding pursuant to Part VII.

While this rule is similar to former Bankruptcy Rule 111, it substitutes the clerk of the bankruptcy court for the clerk of the district court as the person who is to issue the summons.

The modes of service prescribed by the rule are personal or by mail, when service can be effected in one of these ways in the

United States. Such service is to be made in the manner prescribed in adversary proceedings by Rule 7004(a) and (b). If service must be made in a foreign country, the mode of service is one of that set forth in Rule 4(i) F. R. Civ. P.

When the methods set out in Rule 7004(a) and (b) cannot be utilized, service by publication coupled with mailing to the last known address is authorized. Cf. Rule 7004(c). The court determines the form and manner of publication as provided in Rule 9007. The publication need not set out the petition or the order directing service by publication. In order to apprise the debtor fairly, however, the publication should include all the information required to be in the summons by Official Form No. 13 and a notice indicating how service is being effected and how a copy of the petition may be obtained.

There are no territorial limits on the service authorized by this rule, which continues the practice under the former rules and Act. There must, however, be a basis for jurisdiction pursuant to § 109(a) of the Code for the court to order relief. Venue provisions are set forth in 28 U.S.C. § 1472.

Subdivision (f) of Rule 7004 and subdivisions (g) and (h) of Rule 4 F. R. Civ. P. govern time and proof of service and amendment of process or of proof of service.

Rule 1004 provides for transmission to nonpetitioning partners of a petition filed against the partnership by fewer than all the general partners.

Rule 1011. Responsive Pleading or Motion in Involuntary Cases

(a) WHO MAY CONTEST PETITION. The debtor named in an involuntary petition may contest the petition. In the case of a petition against a partnership under Rule 1004(b), a nonpetitioning general partner, or alleged general partner, may contest the petition.

(b) DEFENSES AND OBJECTIONS; WHEN PRESENTED. Defenses and objections to the petition shall be presented in the manner prescribed by Rule 12 F.R. Civ. P. and shall be filed and served within 20 days after service of summons, except that if service is made by publication on a debtor or partner not residing or found within the state in which the bankruptcy court sits, the court shall prescribe the time for filing and serving the response.

(c) EFFECT OF MOTION. Service of a motion under Rule 12(b) F.R. Civ. P. shall extend the time for filing and serving a responsive pleading as permitted by Rule 12(a) F. R. Civ. P.

(d) CLAIMS AGAINST PETITIONERS. A claim against a petitioning creditor may not be asserted in the answer except for the purpose of defeating the petition.

(e) OTHER PLEADINGS. No other pleadings shall be permitted, except that the court may order a reply to an answer and prescribe the time for filing and service.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 112. A petition filed by fewer than all the general partners under Rule 1004(b) to have an order for relief entered with respect to the partnership is referred to as a petition against the partnership because of the adversary character of the proceeding it commences. Cf. § 303(b)(3) of the Code; 2 Collier Bankruptcy ¶ 303.05[5][a] (15th ed. 1981); 2 id. ¶¶ 18.33[2], 18.46 (14th ed.

1966). One who denies an allegation of membership in the firm is nevertheless recognized as a party entitled to contest a petition filed against a partnership under subdivision (b) of Rule 1004 in view of the possible consequences to him of an order for relief against the entity alleged to include him as a member. See § 723 of the Code; Francis v. McNeal, 228 U.S. 695 (1913); Manson v. Williams, 213 U.S. 453 (1909); Carter v. Whisler, 275 Fed. 743, 746-747 (8th Cir. 1921). The rule preserves the features of the former Act and Rule 112 and the Code permitting no response by creditors to an involuntary petition or petition against a partnership under Rule 1004(b).

Subdivision (b): Rule 12 F.R. Civ. P. has been looked to by the courts as prescribing the mode of making a defense or objection to a petition in bankruptcy. See Fada of New York, Inc. v. Organization Service Co., Inc., 125 F.2d 120. (2d Cir. 1942); In the Matter of McDougald, 17 F.R.D. 2, 5 (W.D. Ark. 1955); In the Matter of Miller, 6 Fed. Rules Serv. 12f.26, Case No. 1 (N.D. Ohio 1942); Tatum v. Acadian Production Corp. of La., 35 F. Supp. 40, 50 (E.D. La. 1940); 2 Collier, supra ¶ 303.07 (15th ed. 1981); 2 id. at 134-40 (14th ed. 1966). As pointed out in the Note accompanying former Bankruptcy Rule 915 an objection that a debtor is neither entitled to the benefits of the Code nor amenable to an involuntary petition goes to jurisidiction of the subject matter and may be made at any time consistent with Rule 12(h) (3) F.R. Civ. P. Nothing in this rule recognizes standing in a creditor or any other person not authorized to contest a petition to raise an objection that a person eligible to file a voluntary petition cannot be the subject of an order for relief on an involuntary petition. See Seligson & King, Jurisdiction and Venue in Bankruptcy, 36 Ref.J. 36, 38-40 (1962).

As Collier has pointed out with respect to the Bankruptcy Act, "the mechanics of the provisions in § 18a and b relating to time for appearance and pleading are unnecessarily confusing. . . . It would seem, though, to be more straightforward to provide, as does Federal Rule 12(a), that the time to respond runs from the date of service rather than the date of issuance of process." 2 Collier, supra at 119. The time normally allowed for the service and filing of an answer or motion under Rule 1011 runs from the date of the issuance of the summons. Compare Rule 7012. Service of the summons and petition will ordinarily be made by mail under Rule 1010 and must be made within 10 days of the issuance of the summons under Rule 7004(e), which governs the time of service. When service is made by publication, the court should fix the time for service and filing of the response in the light of all the circumstances so as to afford a fair opportunity to the debtor to enter a defense or objection

without unduly delaying the hearing on the petition. Cf. Rule 12(a) F.R. Civ. P.

Subdivision (c): Under subdivision (c), the timely service of a motion permitted by Rule 12(b), (e), (f), or (h) F.R. Civ. P. alters the time within which an answer must be filed. If the court denies a motion or postpones its disposition until trial on the merits, the answer must be served within 10 days after notice of the court's action. If the court grants a motion for a more definite statement, the answer may be served any time within 10 days after the service of the more definite statement.

Many of the rules governing adversary proceedings apply to proceedings on a contested petition unless the court otherwise directs as provided in Rule 1018. The specific provisions of this Rule 1011 or 7005, however, govern the filing of an answer or motion responsive to a petition. The rules of Part VII are adaptations of the corresponding Federal Rules of Civil Procedure, and the effect of Rule 1018 is thus to make the provisions of Civil Rules 5, 8, 9, 15, and 56, inter alia, generally applicable to the making of defenses and objections to the petition. Rule 1018 follows prior law and practice in this respect. See 2 Collier, Bankruptcy ¶¶ 18.39-18.41 (14th ed. 1966).

Subdivision (d). This subdivision adopts the position taken in many cases that an affirmative judgment against a petitioning creditor cannot be sought by a counterclaim filed in an answer to an involuntary petition. See, e.g., Georgia Jewelers, Inc., v. Bulova Watch Co., 302 F.2d 362, 369-70 (5th Cir. 1962); Associated Electronic Supply Co. of Omaha v. C.B.S. Electronic Sales Corp., 288 F.2d 683, 684-85 (8th Cir. 1961). The subdivision follows Harris v. Capehart-Farnsworth Corp., 225 F.2d 268 (8th Cir. 1955), in permitting the debtor to challenge the standing of a petitioner by filing a counterclaim against him. It does not foreclose the court from rejecting a counterclaim that cannot be determined without unduly delaying the decision upon the petition. See In the Matter of Bichel Optical Laboratories, Inc., 299 F. Supp. 545 (D. Minn. 1969).

Subdivision (e). This subdivision makes it clear that no reply needs to be made to an answer, including one asserting a counterclaim, unless the court orders otherwise.

Rule 1012. Examination of Debtor, Including Discovery, on Issue of Nonpayment of Debts in Involuntary Cases

(a) DISCOVERY. When a petition commencing an involuntary case under § 303 of the Code alleges that the debtor is generally not paying its debts as they become due, and the debtor denies the allegation, discovery may be in accordance with Rules 26-37, F.R. Civ. P.

(b) SANCTIONS. If the debtor fails to appear, produce records, or submit to examination or deposition, the court may enter an order for relief or other appropriate order, in addition to the sanctions available under Rule 37 F.R. Civ. P.

(c) OTHER PROCEDURES. The examination or discovery provided in this rule does not preclude the procedures available under Rule 2004.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rule 114. Since the provisions in § 303 of the Code apply equally to chapter 7 and 11 cases, the rule applies in both types of cases.

Former Rule 114 was derived from § 3d of the Bankruptcy Act but added the three sanctions in Rule 37, F.R. Civ. P. Former Rule 114 thus differed from the holdings in In re Richards Discount Jewelers, Inc., 303 F. Supp. 517, 518 (S.D.N.Y. 1969), and In the Matter of Shulund, 210 F. Supp. 195, 199-200 (D. Mont. 1962), that § 3d of the Act was inconsistent with Rule 37 and prescribed the only consequence for failure of the bankrupt to appear with his papers and submit to an examination on the issue of insolvency or inability to pay debts.

Rule 2004 deals with examination of the debtor. The last sentence of Rule 1012 is continued in part from former Rule 114 which eliminates doubts as to the availability to petitioning creditors of an examination of the debtor and others in accordance with the practice that developed under § 21a of the Act. See 1 Collier, Bankruptcy ¶ 3.208[2] (14th ed. 1961); 2 id. ¶ 18.41[7] (1966); 2 id. ¶ 21.08 (1964); 2 id. ¶¶ 105.04, 343.01-.12, 344.01 et seq. (15th ed. 1981); 3 id. ¶ 521.13. The discovery procedures of Rules 26-37, F.R. Civ. P., available in proceedings on a contested involuntary petition pursuant to Rule 1018 are explicitly made applicable to the issue of nonpayment of debts by Rule 1012.

Rule 1013. Hearing and Disposition of Petition in Involuntary Cases

(a) CONTESTED PETITION. The court shall determine the issues of a contested petition at the earliest practicable time and forthwith enter an order for relief, dismiss the petition, or enter other appropriate orders.

(b) DEFAULT. If no pleading or other defense to a petition is filed within the time provided by Rule 1011, the court, on the next day, or as soon thereafter as practicable, shall enter an order for the relief prayed for in the petition.

(c) ORDER FOR RELIEF. An order for relief shall conform substantially to Official Form No. 14.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rule 115(a) and (c) and applies in chapter 7 and 11 cases. The right to trial by jury under § 19a of the Bankruptcy Act has been abrogated and the availability of a trial by jury is within the discretion of the bankruptcy judge pursuant to 28 U.S.C. § 1480(b). Rule 9015 governs the demand for a jury trial.

Subdivision (b) of Rule 1013 is derived from former Bankruptcy Rule 115(c) and § 18(e) of the Bankruptcy Act. If an order for relief is not entered on default, dismissal will ordinarily be appropriate but the court may postpone definitive action. See also Rule 9024 with respect to setting aside an order for relief on default for cause.

Subdivision (e) of former Bankruptcy Rule 115 has not been carried over because its provisions are covered by § 303(i) of the Code.

Rule 1014. Change of Venue

(a) TRANSFER OF CASES.

(1) Cases Filed in Proper District. If a petition is filed in a proper district, on timely motion of a party in interest, and after hearing on notice to the petitioners and to other persons as directed by the court, the case may be transferred to any other district if the court determines that the transfer is for the convenience of the parties and witnesses in the interest of justice.

(2) Cases Filed in Improper District. If a petition is filed in an improper district, on timely motion of a party in interest and after hearing on notice to the petitioners and to other persons as directed by the court, the case may be retained or transferred to any other district if the court determines that the retention or transfer is for the convenience of the parties and witnesses in the interest of justice. Notwithstanding the foregoing, if no objection is raised, the court may, without a hearing, retain a case filed in an improper district.

(b) PROCEDURE WHEN PETITIONS INVOLVING THE SAME DEBTOR OR RELATED DEBTORS ARE FILED IN DIFFERENT COURTS. If petitions commencing cases under the Code are filed in different districts by or against (1) the same debtor, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, on motion filed in the court in which the first petition is filed and after hearing on notice to the petitioners and other persons as directed by the court, the court may determine, for the convenience of the parties and witnesses, in the interest of justice the court or courts in which the case or cases should proceed. Except as otherwise ordered by the court in which the first petition is filed, the proceedings on the other petitions shall be stayed by the courts in which the petitions have been filed until the determination is made. The courts in which petitions have been filed shall act in accordance with the determination.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 116 which contained venue as well as transfer provisions. Public Law 95-598, however, placed the venue provisions in 28 U.S.C. § 1472, and no purpose is served by repeating them in this rule. Transfer of cases is provided in 28 U.S.C. § 1475 but this rule adds the procedure for obtaining transfer. Pursuant to 28 U.S.C. § 1472, proper venue for cases filed under the Code is either the district of domicile, residence, principal place of business, or location of principal assets for 180 days or the longer portion thereof immediately preceding the

petition. 28 U.S.C. § 1475 permits the court to transfer a case in the interest of justice and for the convenience of the parties. If the venue is improper, the court may retain or transfer the case in the interest of justice and for the convenience of the parties pursuant to 28 U.S.C. § 1477.

Subdivision (a) of the rule is derived from former Bankruptcy Rule 116(b). It implements 28 U.S.C. §§ 1475 and 1477 and clarifies the procedure to be followed in requesting and effecting transfer of a case. Subdivision (a) protects the parties against being subjected to a transfer except on a timely motion of a party in interest. If the transfer would result in fragmentation or duplication of administration, increase expense, or delay closing the estate, such a factor would bear on the timeliness of the motion as well as on the propriety of the transfer under the standards prescribed in subdivision (a). Subdivision (a) of the rule requires the interest of justice and the convenience of the parties to be the grounds of any transfer of a case or of the retention of a case filed in an improper district as does 28 U.S.C. § 1477. Cf. 28 U.S.C. § 1404(a) (district court may transfer any civil action "[f]or the convenience of parties and witnesses, in the interest of justice"). It also expressly requires a hearing on notice to the petitioner or petitioners before the transfer of any case may be ordered. Under this rule, a motion by a party in interest is necessary. There is no provision for the court to act on its own initiative.

Subdivision (b) is derived from former Bankruptcy Rule 116(c). It authorizes the court in which the first petition is filed under the Code by or against a debtor to entertain a motion seeking a determination whether the case so commenced should continue or be transferred and consolidated or administered jointly with another case commenced by or against the same or related person in another court under a different chapter of the Code. Subdivision (b) is correlated with 28 U.S.C. § 1472 which authorizes petitioners to file cases involving a partnership and partners or affiliated debtors.

The reference in subdivision (b) to petitions filed "by" a partner or "by" any other of the persons mentioned is to be understood as referring to voluntary petitions. It is not the purpose of this subdivision to permit more than one case to be filed in the same court because a creditor signing an involuntary petition happens to be a partner, a partnership, or an affiliate of a debtor.

Transfers of adversary proceedings in cases under title 11 are governed by Rule 7087 and 28 U.S.C. § 1475.

Rule 1015. Consolidation or Joint Administration of Cases Pending in Same Court

(a) CASES INVOLVING SAME DEBTOR. If two or more petitions are pending in the same court by or against the same debtor, the court may order consolidation of the cases.

(b) CASES INVOLVING TWO OR MORE RELATED DEBTORS. If a joint petition or two or more petitions are pending in the same court by or against (1) a husband and wife, or (2) a partnership and one or more of its general partners, or (3) two or more general partners, or (4) a debtor and an affiliate, the court may order a joint administration of the estates. Prior to entering an order the court shall give consideration to protecting creditors of different estates against potential conflicts of interest.

(c) EXPEDITING AND PROTECTIVE ORDERS. When an order for consolidation or joint administration of a joint case or two or more cases is entered pursuant to this rule, while protecting the rights of the parties under the Code, the court may enter orders as may tend to avoid unnecessary costs and delay.

ADVISORY COMMITTEE NOTE

Rule 117(a) both

Subdivision (a) of this rule is derived from former Bankruptcy Rule 117(a). It applies to cases when the same debtor is named in both voluntary and involuntary petitions, when husband and wife

have filed a joint petition pursuant to § 302 of the Code, and when two or more involuntary petitions are filed against the same debtor. It also applies when cases are pending in the same court by virtue of a transfer of one or more petitions from another court. Subdivision (c) allows the court discretion regarding the order of trial of issues raised by two or more involuntary petitions against the same debtor.

Subdivision (b) recognizes the propriety of joint administration of estates in certain kinds of cases. The election or appointment of one trustee for two or more jointly administered estates is authorized by Rule 2009. The authority of the court to order joint administration under subdivision (b) extends equally to the situation when the petitions are filed under different sections, e.g., when one petition is voluntary and the other involuntary, and when all of the petitions are filed under the same section of the Code.

Consolidation of cases implies a unitary administration of the estate and will ordinarily be indicated under the circumstances to which subdivision (a) applies. This rule does not deal with the consolidation of cases involving two or more separate debtors. Consolidation of the estates of separate debtors may sometimes be appropriate, as when the affairs of an individual and a corporation owned or controlled by that individual are so intermingled that the court cannot separate their assets and liabilities. Consolidation, as distinguished from joint administration, is neither authorized nor prohibited by this rule since the propriety of consolidation depends on substantive considerations and affects the substantive rights of the creditors of the different estates. For illustrations of the substantive consolidation of separate estates, see Sampsell v. Imperial Paper & Color Corp., 313 U.S. 215 (1941). See also Chemical Bank N.Y. Trust Co. v. Kheel, 369 F.2d 845 (2d Cir. 1966); Seligson & Mandell, Multi-Debtor Petition — Consolidation of Debtors and Due Process of Law, 73 Com.L.J. 341 (1968); Kennedy, Insolvency and the Corporate Veil in the United States in Proceedings of the 8th International Symposium on Comparative Law 232, 248-55 (1971).

Joint administration as distinguished from consolidation may include combining the estates by using a single docket for the matters occurring in the administration, including the listing of filed claims, the combining of notices to creditors of the different estates, and the joint handling of other purely administrative matters that may aid in expediting the cases and rendering the process less costly.

Subdivision (c) is an adaptation of the provisions of Rule 42(a) F.R. Civ. P. for the purposes of administration of estates under this rule. The rule does not deal with filing fees when an order for the consolidation of cases or joint administration of estates is made.

A joint petition of husband and wife, requiring the payment of a single filing fee, is permitted by § 302 of the Code. Consolidation of such a case, however, rests in the discretion of the court; see § 302(b) of the Code.

Rule 1016. Death or Insanity of Debtor

Death or insanity of the debtor shall not abate a liquidation case under chapter 7 of the Code. In such event the estate shall be administered and the case concluded in the same manner, so far as possible, as though the death or insanity had not occurred. If a reorganization or individual's debt adjustment case is pending under chapter 11 or chapter 13, the case may be dismissed; or if further administration is possible and in the best interest of the parties, the case may proceed and be concluded in the same manner, so far as possible, as though the death or insanity had not occurred.

ADVISORY COMMITTEE NOTE

This rule is derived from former Rules 118 and 11-16. In a chapter 11 reorganization case or chapter 13 individual's debt adjustment case, the likelihood is that the case will be dismissed.

Rule 1017. Dismissal of Case; Suspension

(a) VOLUNTARY DISMISSAL; DISMISSAL FOR WANT OF PROSECUTION. Except as provided in § 1307(b) of the

Code, a petition shall not be dismissed on motion of the petitioner or for want of prosecution or other cause or by consent of the parties prior to a hearing on notice to all creditors as provided in Rule 2002(a). For such notice, the debtor shall file a list of all creditors with their addresses within the time fixed by the court unless the list was previously filed. If the debtor fails to file the list, the court may order the preparing and filing by the debtor or other person.

(b) DISMISSAL FOR FAILURE TO PAY FILING FEE.

(1) For failure to pay any installment of the filing fee the court may dismiss the petition after hearing on notice to the debtor and the trustee.

(2) If the petition is dismissed or the case closed without full payment of the filing fee, the installments collected shall be distributed in the same manner and proportions as if the filing fee had been paid in full.

(3) Notice of dismissal for failure to pay the filing fee shall be given within 30 days after the dismissal to creditors appearing on the list of creditors and to those who have filed claims, in the manner provided in Rule 2002.

(c) SUSPENSION. A petition shall not be dismissed or proceedings suspended pursuant to § 305 of the Code prior to a hearing on notice as provided in Rule 2002(a).

(d) PROCEDURE FOR DISMISSAL OR CONVERSION. A proceeding to dismiss a case or convert a case to another chapter is governed by Rule 9014.

ADVISORY COMMITTEE NOTE

Subdivision (a) of this rule is derived from former Bankruptcy Rule 120(a). While the rule applies to voluntary and involuntary cases, the "consent of the parties" referred to is that of petitioning creditors and the debtor in an involuntary case. The last sentence recognizes that the court should not be confined to petitioning creditors in its choice of parties on whom to call for assistance in preparing the list of creditors when the debtor fails to do so. This subdivision implements §§ 303(j), 707, 1112 and 1307 of the Code by specifying the manner of and persons to whom notice shall be given and requiring the court to hold a hearing on the issue of dismissal.

Subdivision (b) is derived from former Bankruptcy Rule 120(b). A dismissal under this subdivision can occur only when the petition has been permitted to be filed purusant to Rule 1006(b). The provision for notice in paragraph (3) is correlated with the provision in Rule 4006 when there is a waiver, denial, or revocation of a discharge. As pointed out in the Note accompanying Rule 4008, the purpose of notifying creditors of a debtor that no discharge has been granted is to correct their assumption to the contrary so that they can take appropriate steps to protect their claims.

Subdivision (c) is new and specifies the notice required for a hearing on dismissal or suspension pursuant to § 305 of the Code. The suspension to which this subdivision refers is that of the case; it does not concern abstention of the court in hearing an adversary proceeding pursuant to 28 U.S.C. § 1478(b).

Subdivision (d). Any proceeding, whether by a debtor or other party, to dismiss or convert a case under §§ 706, 707, 1112, or 1307 is commenced by a motion pursuant to Rule 9014.

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Rule 1018. Contested Involuntary Petitions; Proceedings to Vacate Order for Relief; Applicability of Rules in Part VII Governing Adversary Proceedings

The following rules in Part VII apply in all proceedings relating to a contested involuntary petition and in all proceedings to vacate an order for relief: Rules 7005, 7008-7010, 7015, 7016, 7024-7026, 7028-7037, 7052, 7054, 7056, and 7062, except as otherwise provided in Part I of these rules and unless the court otherwise directs. The court may direct that other rules in Part VII shall also apply. For the purposes of this rule a reference in the Part VII rules to adversary proceedings shall be read as a reference to proceedings relating to a contested involuntary petition, or contested ancillary petition, or proceedings to vacate an order for relief. Reference in the Federal Rules of Civil Procedure to the complaint shall be read as a reference to the petition.

ADVISORY COMMITTEE NOTE

The rules in Part VII to which this rule refers are adaptations of the Federal Rules of Civil Procedure for the purpose of governing the procedure in adversary proceedings in cases under the Code. See the Note accompanying Rule 7001 infra. Because of the special need for dispatch and expedition in the determination of the issues in an involuntary petition, see Acme Harvester Co. v. Beekman Lumber Co., 222 U.S. 300, 309 (1911), the objective of some of the Federal Rules of Civil Procedure and their adaptations in Part VII to facilitate the settlement of multiple controversies involving many persons in a single lawsuit is not compatible with the exigencies of

bankruptcy administration. See United States F. & G. Co. v. Bray, 225 U.S. 205, 218 (1912). For that reason Rules 7013, 7014 and 7018-7023 will rarely be appropriate in a proceeding on a contested petition.

Certain terms used in the Federal Rules of Civil Procedure have altered meanings when they are made applicable in cases under the Code by these rules. See Rule 9002 infra. This Rule 1018 requires that the terms "adversary proceedings" when used in the rules in Part VII and "complaint" when used in the Federal Rules of Civil Procedure be given altered meanings when they are made applicable to proceedings relating to a contested petition or proceedings to vacate any order for relief. A motion to vacate an order for relief, whether or not made on a petition that was or could have been contested, is governed by the rules in Part VII referred to in this Rule 1018.

Rule 1019. Conversion of Chapter 11 Reorganization Case or Chapter 13 Individual's Debt Adjustment Case to Chapter 7 Liquidation Case

When a chapter 11 or chapter 13 case has been converted or reconverted to a chapter 7 case:

(1) Filing of Lists, Inventories, Schedules, Statements. Lists, inventories, schedules, statements of financial affairs, and statements of executory contracts theretofore filed shall be deemed to be filed in the chapter 7 case, unless the court directs otherwise. If they have not been previously filed, the debtor shall comply with Rule 1007 as if an order for relief had been entered on an involuntary petition on the date of the entry of the order directing that the case continue under chapter 7.

(2) Notice of Order of Conversion. Within 20 days after entry of the order converting the case to a chapter 7 case, notice of the order shall be given to all creditors in the manner provided by Rule 2002 and shall be included in the notice of the meeting of creditors.

(3) Reconversion to Chapter 7. When a chapter 7 case had been converted to a chapter 11 or chapter 13 case and thereafter reconverted to a chapter 7 case, if the time for filing claims, a complaint objecting to discharge, or a complaint to obtain a determination of the dischargeability of any debt expired in the original chapter 7 case, the time shall not be revived or extended except as provided in Rule 4004 or 4007.

(4) Claims Filed in Superseded Case. All claims filed in the superseded case shall be deemed filed in the chapter 7 case.

(5) Turnover of Records and Property. After qualification of, or assumption of duties by the chapter 7 trustee, any debtor in possession or trustee previously acting in the chapter 11 or chapter 13 case shall, forthwith, unless otherwise ordered, turn over to the chapter 7 trustee all records and property of the estate in his possession or control.

(6) Filing Final Report and Schedule of Postpetition Debts. Each debtor in possession or trustee in the superseded case shall file with the court a final report and account within 30 days following the entry of the order of conversion, unless the court directs otherwise. The report shall include a schedule of unpaid debts incurred after commencement of the chapter 11 or chapter 13 case. If the conversion order is entered after confirmation of a plan, the debtor shall file with the court (A) a schedule of property not listed in the final report and account acquired after the filing of the original petition but before entry of the conversion order; (B) a schedule of unpaid debts not listed in the final report and account incurred after confirmation but before entry of the conversion order; and (C) a schedule of executory contracts entered into or assumed after the filing of the original petition but before entry of the conversion order.

(7) Filing of Postpetition Claims; Notice. On the filing of the schedule of unpaid debts, the court shall order that written notice be given to those entities, including the United States, any state, or any subdivision thereof, that their claims may be filed within 60 days from the entry of the order, pursuant to Rule 3001(a)-(d). The court shall fix the time for filing claims arising from debts not so scheduled or arising

58 from rejection of executory contracts under §§ 348(c) and
59 365(d) of the Code.
60 (8) Extension of Time to File Claims Against Surplus.
61 Any extension of time for the filing of claims against a
62 surplus granted pursuant to Rule 3002(c)(6), shall apply to
63 holders of claims who failed to file their claims within the
64 time prescribed, or fixed by the court pursuant to paragraph
65 (7) of this rule, and notice shall be given as provided in Rule
66 2002.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 122 and implements § 348 of the Code. The rule applies to proceedings in a chapter 7 case following supersession of a case commenced under chapter 11 or 13, whether the latter was initiated by an original petition or was converted from a pending chapter 7 or another chapter case. The rule is not intended to invalidate any action taken in the superseded case before its conversion to chapter 7.

Paragraph (1): If requirements applicable in the superseded case respecting the filing of schedules of debts and property, or lists of creditors and inventory, and of statements of financial affairs have been complied with before the order directing conversion to liquidation, these documents will ordinarily provide all the information about the debts, property, financial affairs, and contracts of the debtor needed for the administration of the estate. If the information submitted in the superseded case is inadequate for the purposes of administration, however, the court may direct the preparation of further informational material and the manner and time of its submission pursuant to paragraph (1). If no schedules, lists, inventories, or statements were filed in the superseded case, this paragraph imposes the duty on the debtor to file schedules and a statement of affairs pursuant to Rule 1007 as if an involuntary petition had been filed on the date when the court directed the conversion of the case to a liquidation case.

Paragraphs (2) and (3). Paragraph (2) requires notice to be given to all creditors of the order of conversion. The notice is to be included in the notice of the meeting of creditors and Official Form No. 16 may be adapted for use. A meeting of creditors may have been held in the superseded case as required by § 341(a) of the Code but that would not dispense with the need to hold one in the ensuing liquidation case. Section 701(a) of the Code permits the court to appoint the trustee acting in the chapter 11 or 13 case as interim trustee in the chapter 7 case. Section 702(a) of the Code allows creditors to elect a trustee but only at the meeting of creditors held under § 341. The right to elect a trustee is not lost because the chapter 7 case follows a chapter 11 or 13 case. Thus a meeting of creditors is necessary. The date fixed for the meeting of creditors will control at least the time for filing claims pursuant to Rule 3002(c). That time will remain applicable in the ensuing chapter 7 case except as paragraph (3) provides, if that time had expired in an earlier chapter 7 case which was converted to the chapter 11 or 13 case, it is not revived in the subsequent chapter 7 case. The same is true if the time for filing a complaint objecting to discharge or to determine nondischargeability of a debt had expired. Paragraph (3), however, recognizes that such time may be extended by the court under Rule 4004 or 4007 on motion made within the original prescribed time.

Paragraph (4) renders it unnecessary to file anew claims that had been filed in the chapter 11 or 13 case before conversion to chapter 7.

Paragraph (5) contemplates that typically, after the court orders conversion of a chapter case to liquidation, a trustee under chapter 7 will forthwith take charge of the property of the estate and proceed expeditiously to liquidate it. The court may appoint the interim trustee in the chapter 7 case pursuant to § 701(a) of the Code. If creditors do not elect a trustee under § 702, the interim trustee becomes the trustee.

Paragraph (6) requires the trustee or debtor in possession acting in the chapter 11 or 13 case to file a final report and schedule of debts incurred in that case. This schedule will provide the information necessary for giving the notice required by paragraph (7) of the rule.

Paragraph (7) requires that claims that arose in the chapter 11 or 13 case be filed within 60 days after entry of the order converting the case to one under chapter 7. Claims not scheduled pursuant to paragraph (6) of the rule or arising from the rejection of an

executory contract entered into during the chapter case may be filed within a time fixed by the court. Pursuant to § 348(c) of the Code, the conversion order is treated as the order for relief to fix the time for the trustee to assume or reject executory contracts under § 365(d).

Paragraph (8) permits the extension of the time for filing claims when claims are not timely filed but only with respect to any surplus that may remain in the estate. See also § 726(a) (2) (C) and (3) of the Code.

PART II

OFFICERS AND ADMINISTRATION; NOTICES; MEETINGS; EXAMINATIONS; ELECTIONS; ATTORNEYS AND ACCOUNTANTS

Rule 2001. Appointment of Interim Trustee Before Order for Relief in a Chapter 7 Liquidation Case

(a) APPOINTMENT. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may appoint an interim trustee under § 303(g) of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the petitioning creditors and other parties in interest as the court may designate.

(b) BOND OF MOVANT. An interim trustee may not be appointed under this rule unless the movant furnishes a bond in an amount approved by the court, conditioned to indemnify the debtor for costs, attorney's fee, expenses, and damages allowable under § 303(i) of the Code.

(c) ORDER OF APPOINTMENT. The order appointing the interim trustee shall state why the appointment is necessary and shall specify the trustee's duties.

(d) TURNOVER AND REPORT. Following qualification of the trustee selected under § 702 of the Code, the interim

trustee, unless otherwise ordered, shall (1) forthwith turn over to the trustee all the records and property of the estate in possession or subject to control of the interim trustee and, (2) within 30 days thereafter file a final report and account.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rule 201. See also former Chapter X Rule 10-201. In conformity with title 11 of the United States Code, this rule substitutes "interim trustee" for "receiver." Subdivision (a) and (e) of Rule 201 are not included because the provisions contained therein are found in detail in § 303(g) of the Code, or they are inconsistent with § 701 of the Code. Similarly, the provisions in Rule 201(d) relating to a debtor's counterbond are not included because of their presence in § 303(g).

Subdivision (a) makes it clear that the court may not on its own motion order the appointment of an interim trustee before an order for relief is entered. Appointment may be ordered only on motion of a party in interest.

Subdivision (b) requires those seeking the appointment of an interim trustee to furnish a bond. The bond may be the same one required of petitioning creditors under § 303(e) of the Code to indemnify the debtor for damages allowed by the court under § 303(i).

Subdivision (c) requires that the order specify which duties enumerated in § 303(g) shall be performed by the interim trustee. Reference should be made to Rule 2015 for additional duties required of an interim trustee including keeping records and filing periodic reports with the court.

Subdivision (d) requires turnover of records and property to the trustee selected under § 702 of the Code, after qualification. That trustee may be the interim trustee who becomes the trustee because of the failure of creditors to elect one under § 702(d) or the trustee elected by creditors under § 702(b), (c).

Rule 2002. Notices to Creditors, Equity Security Holders, and United States

(a) TWENTY-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i) and (k) of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 20 days notice by mail of (1) the meeting of creditors pursuant to § 341 of the Code; (2) a proposed use, sale, or lease of property other than in the ordinary course of business unless the court for cause shown shortens the time or directs another method of giving notice; (3) the hearing on approval of a compromise or settlement of a controversy, unless the court for cause shown directs that notice not be sent; (4) the date fixed for the filing of claims against a surplus in an estate as provided in Rule 3002(c)(6); (5) in a chapter 7 liquidation and a chapter 11 reorganization case, the hearing on the dismissal or conversion of a case to another chapter; (6) the time fixed to accept or reject a proposed modification of a plan; (7) hearings on all applications for compensation or reimbursement of expenses totalling in excess of $100; and (8) the time fixed for filing proofs of claims pursuant to Rule 3003(c).

(b) TWENTY-FIVE-DAY NOTICES TO PARTIES IN INTEREST. Except as provided in subdivisions (h), (i) and (k)

of this rule, the clerk, or some other person as the court may direct, shall give the debtor, the trustee, all creditors and indenture trustees not less than 25 days notice by mail of (1) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; and (2) the time fixed for filing objections to and the hearing to consider confirmation of a plan.

(c) CONTENT OF NOTICE.

(1) Proposed Use, Sale, or Lease of Property. Subject to Rule 6004 the notice of a proposed use, sale, or lease of property required by subdivision (a)(2) of this rule shall include the time and place of any public sale, the terms and conditions of any private sale and the time fixed for filing objections. The notice of a proposed use, sale, or lease of property, including real estate, is sufficient if it generally describes the property.

(2) Notice of Hearing on Compensation. The notice of a hearing on an application for compensation or reimbursement of expenses required by subdivision (a)(7) of this rule shall identify the applicant and the amounts requested.

(d) NOTICE TO EQUITY SECURITY HOLDERS. In a chapter 11 reorganization case, unless otherwise ordered by

the court, the clerk, or some other person as the court may direct, shall in the manner and form directed by the court give notice to all equity security holders of (1) the order for relief; (2) any meeting of equity security holders ordered by the court pursuant to § 341 of the Code; (3) the hearing on the dismissal or conversion of a case to another chapter; (4) the time fixed for filing objections to and the hearing to consider approval of a disclosure statement; (5) the time fixed for filing objections to and the hearing to consider confirmation of a plan; and (6) the time fixed to accept or reject a proposed modification of a plan.

(e) NOTICE OF NO DIVIDEND. In a chapter 7 liquidation case, if it appears from the schedules that there are no assets from which a dividend can be paid, the notice of the meeting of creditors may include a statement to that effect; that it is unnecessary to file claims; and that if sufficient assets become available for the payment of a dividend, further notice will be given for the filing of claims.

(f) OTHER NOTICES. Except as provided in subdivision (k) of this rule, the clerk shall give the debtor, all creditors and indenture trustees notice by mail of (1) the order for relief; (2) dismissal of the case; (3) the time allowed for filing claims pursuant to Rule 3002; (4) the entry of an order

directing that the case be converted to a case under a different chapter; (5) the time fixed for filing a complaint objecting to the debtor's discharge pursuant to § 727 of the Code as provided in Rule 4004; (6) the time fixed for filing a complaint to determine the dischargeability of a debt pursuant to § 523 of the Code as provided in Rule 4007; (7) the order of discharge as provided in Rule 4004(g); (8) the waiver denial, or revocation of a discharge as provided in Rule 4006; (9) entry of an order confirming a chapter 9 or 11 plan; and (10) a summary of the trustee's final report and account in a chapter 7 case if the net proceeds realized exceed $250. Notice of the time fixed for accepting or rejecting a plan pursuant to Rule 3017(c) shall be given in accordance with Rule 3017(d).

(g) ADDRESSES OF NOTICES. All notices required to be mailed under this rule to a creditor, equity security holder, or indenture trustee shall be addressed as he or his authorized agent may direct in a request filed with the court; otherwise, to the address shown in the list of creditors or the schedule whichever is filed later, but if a different address is stated in a proof of claim duly filed, that address shall be used.

(h) NOTICES TO CREDITORS WHOSE CLAIMS ARE FILED. In a chapter 7 case, the court may, after 90 days

following the first date set for the meeting of creditors pursuant to § 341 of the Code, direct that all notices required by subdivision (a) of this rule, except clause (4) thereof, be mailed only to creditors whose claims have been filed and creditors, if any, who are still permitted to file claims by reason of an extension granted under Rule 3002(c)(6).

(i) NOTICES TO COMMITTEES. Copies of all notices required to be mailed under this rule shall be mailed to the committees appointed pursuant to the Code or to their authorized agents. Notwithstanding the foregoing subdivisions, the court may order that notices required by subdivision (a) (2), (3) and (7) of this rule be mailed only to the committees or to their authorized agents and to the creditors and equity security holders who file with the court a request that all notices be mailed to them.

(j) NOTICES TO THE UNITED STATES. Copies of notices required to be mailed to all creditors under this rule shall be mailed (1) in a chapter 11 reorganization case to the Securities and Exchange Commission at Washington, D.C., and at any other place the Commission designates in writing filed with the court if the Commission has filed a notice of appearance in the case or has made a request in writing filed with the court; (2) in a commodity broker case, to the

Commodity Futures Trading Commission at Washington, D.C.; (3) in a chapter 11 case to the District Director of Internal Revenue for the district in which the case is pending; (4) if the papers in the case disclose a debt to the United States other than for taxes, to the United States attorney for the district in which the case is pending and to the department, agency, or instrumentality of the United States through which the debtor became indebted; or if the filed papers disclose a stock interest of the United States, to the Secretary of the Treasury at Washington, D.C.

(k) NOTICE BY PUBLICATION. The court may order notice by publication if it finds that notice by mail as provided in this rule is impracticable or that it is desirable to supplement the notice.

(l) ORDERS DESIGNATING MATTER OF NOTICES. The court may from time to time enter orders designating the matters in respect to which, the person to whom, and the form and manner in which notices shall be sent except as otherwise provided by these rules.

(m) CAPTION. The caption of every notice given under this rule shall comply with Rule 1005.

ADVISORY COMMITTEE NOTE

Some of the notices required by this rule may be given either by the clerk or as the court may otherwise direct. For example, the court may order the trustee or debtor in possession to transmit one or more of the notices required by this rule, such as, notice of a proposed sale of property. See § 363(b) of the Code. When publication of notices is required or desirable, reference should be made to Rule 9008.

Notice of the order for relief is required to be given by § 342 of the Code and by subdivision (f)(1) of this rule. That notice may be combined with the notice of the meeting of creditors as indicated in Official Form No. 16, the notice and order of the meeting of creditors.

Subdivision (a) sets forth the requirement that 20 days notice be given of the significant events in a case under the Bankruptcy Code. The former Act and Rules provided a ten day notice in bankruptcy and Chapter XI cases, and a 20 day notice in a Chapter X case. This rule generally makes uniform the 20 day notice provision except that subdivision (b) contains a 25 day period for certain events in a chapter 9, 11, or 13 case. Generally, Rule 9006 permits reduction of time periods. Since notice by mail is complete on mailing, the requirement of subdivision (a) is satisfied if the notices are deposited in the mail at least 20 days before the event. See Rule 9006(e). The exceptions referred to in the introductory phrase include the modifications in the notice procedure permitted by subdivision (h) as to non-filing creditors, subdivision (i) as to cases where a committee is functioning, and subdivision (k) where compliance with subdivision (a) is impracticable.

The notice of a proposed sale affords creditors an opportunity to object to the sale and raise a dispute for the court's attention. Section 363(b) of the Code permits the trustee or debtor in possession to sell property, other than in the ordinary course of business, only after notice and hearing. If no objection is raised after notice, § 102(1) provides that there need not be an actual hearing. Thus, absent objection, there would be no court involvement with respect to a trustee's sale. Once an objection is raised, only the court may pass on it.

Prior to the Code the court could shorten the notice period for a proposed sale of property or dispense with notice. This subdivision (a), permits the 20 day period to be shortened in appropriate circumstances but the rule does not contain a provision allowing the

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court to dispense with notice. The rule is thus consistent with the Code, §§ 363(b) and 102(1)(A) of the Code. See 28 U.S.C. § 2075. It may be necessary, in certain circumstances, however, to use a method of notice other than mail. Subdivision (a)(2) vests the court with discretion, on cause shown, to order a different method. Reference should also be made to Rule 6004 which allows a different type of notice of proposed sales when the property is of little value.

Notice of the hearing on an application for compensation or reimbursement of expenses totalling $100 or less need not be given. In chapter 13 cases relatively small amounts are sometimes allowed for post-confirmation services and it would not serve a useful purpose to require advance notice.

Subdivision (b) is similar to subdivision (a) but lengthens the notice time to 25 days with respect to those events particularly significant in chapter 9, 11 and 13 cases. The additional time may be necessary to formulate objections to a disclosure statement or confirmation of a plan and preparation for the hearing on approval of the disclosure statement or confirmation. The disclosure statement and hearing thereon is only applicable in chapter 9 cases (§ 901(a) of the Code), and chapter 11 cases (§ 1125 of the Code).

Subdivision (c) specifies certain matters that should be included in the notice of a proposed sale of property and notice of the hearing on an application for allowances. Rule 6004 fixes the time within which parties in interest may file objections to a proposed sale of property.

Subdivision (d) relates exclusively to the notices given to equity security holders in chapter 11 cases. Under chapter 11, a plan may impair the interests of the debtor's shareholders or a plan may be a relatively simple restructuring of unsecured debt. In some cases, it is necessary that equity interest holders receive various notices and in other cases there is no purpose to be served. This subdivision indicates that the court is not mandated to order notices but rather that the matter should be treated with some flexibility. The court may decide whether notice is to be given and how it is to be given. Under § 341(b) of the Code, a meeting of equity security holders is not required in each case, only when it is ordered by the court. Thus subdivision (d)(2) requires notice only when the court orders a meeting.

In addition to the notices specified in this subdivision, there may be other events or matters arising in a case as to which equity security holders should receive notice. These are situations left to determination by the court.

Subdivision (e), authorizing a notice of the apparent insufficiency of assets for the payment of any dividend, is correlated with Rule 3002(c)(5), which provides for the issuance of an additional notice to creditors if the possibility of a payment later materializes.

Subdivision (f) provides for the transmission of other notices to which no time period applies. Clause (1) requires notice of the order for relief; this complements the mandate of § 342 of the Code requiring such notice as is appropriate of the order for relief. This notice may be combined with the notice of the meeting of creditors to avoid the necessity of more than one mailing. See Official Form No. 16, notice of meeting of creditors.

Subdivision (g) recognizes that an agent authorized to receive notices for a creditor may, without a court order, designate where notices to the creditor he represents should be addressed. Agent includes an officer of a corporation, an attorney at law, or an attorney in fact if the requisite authority has been given him. It should be noted that Official Forms Nos. 17 and 18 do not include an authorization of the holder of a power of attorney to receive notices for the creditor. Neither these forms nor this rule carries any implication that such an authorization may not be given in a power of attorney or that a request for notices to be addressed to both the creditor or his duly authorized agent may not be filed.

Subdivision (h). After the time for filing claims has expired in a chapter 7 case, creditors who have not filed their claims in accordance with Rule 3002(c) are not entitled to share in the estate except as they may come within the special provisions of § 726 of the Code or Rule 3002(c)(6). The elimination of notice to creditors who have no recognized stake in the estate may permit economies in time and expense. Reduction of the list of creditors to receive notices under this subdivision is discretionary. This subdivision does not apply to the notice of the meeting of creditors.

Subdivision (i) contains a list of matters of which notice may be given a creditors' committee or to its authorized agent in lieu of notice to the creditors. Such notice may serve every practical purpose of a notice to all the creditors and save delay and expense. In re Schulte-United, Inc., 59 F.2d 553, 561 (8th Cir. 1932).

Subdivision (j). The premise for the requirement that the district director of internal revenue receive copies of notices that all creditors receive in a chapter 11 case is that every debtor is potentially a tax debtor of the United States. Notice to the district director alerts him to the possibility that a tax debtor's estate is

about to be liquidated or reorganized and that the debtor may be discharged. When other indebtedness to the United States is indicated, the United States attorney is notified as the person in the best position to protect the interests of the government. In addition, the provision requires notice by mail to the head of any department, agency, or instrumentality of the United States through whose action the debtor became indebted to the United States. This rule is not intended to preclude a local rule from requiring a state or local tax authority to receive some or all of the notices to creditors under these rules.

Subdivision (k) specifies two kinds of situations in which notice by publication may be appropriate: (1) when notice by mail is impracticable; and (2) when notice by mail alone is less than adequate. Notice by mail may be impracticable when, for example, the debtor has disappeared or his records have been destroyed and the names and addresses of his creditors are unavailable, or when the number of creditors with nominal claims is very large and the estate to be distributed may be insufficient to defray the costs of issuing the notices. Supplementing notice by mail is also indicated when the debtor's records are incomplete or inaccurate and it is reasonable to believe that publication may reach some of the creditors who would otherwise be missed. Rule 9008 applies when the court directs notice by publication under this rule. Neither clause (2) of subdivision (a) nor subdivision (k) of this rule is concerned with the publication of advertisement to the general public of a sale of property of the estate at public auction under Rule 6004(b). See 3 Collier, Bankruptcy 522-23 (14th ed. 1971); 4B id. 1165-67 (1967); 2 id. ¶ 363.03 (15th ed. 1981).

Subdivision (m). Inclusion in notices to creditors of information as to other names used by the debtor as required by Rule 1005 will assist them in the preparation of their proofs of claim and in deciding whether to file a complaint objecting to the debtor's discharge. Additional names may be listed by the debtor on his statement of affairs when he did not file the petition. The mailing of notices should not be postponed to await a delayed filing of the statement of financial affairs.

Rule 2003. Meeting of Creditors or Equity Security Holders

(a) DATE AND PLACE. The court shall call a meeting of creditors to be held not less than 20 nor more than 40 days

after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the court may set a later time for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the court within the district convenient for the parties in interest.

(b) ORDER OF MEETING.

(1) Meeting of Creditors. The clerk shall preside at the meeting of creditors unless (1) the court designates a different person, or (2) the creditors who may vote for a trustee under § 702(a) of the Code and who hold a majority in amount of claims that vote designate a presiding officer. In a chapter 11 reorganization case, if a chairman has been selected by a creditors' committee appointed pursuant to § 1102(a)(1), the chairman or his designee shall preside. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a trustee or of a creditors' committee. The presiding officer shall have the authority to administer oaths. When a trustee is elected, the creditors may recommend the amount of the trustee's bond to be fixed by the court.

(2) Meeting of Equity Security Holders. If the court orders a meeting of equity security holders pursuant to § 341(b) of the Code, the clerk shall preside unless the holders of equity security interests present at the meeting who hold a majority in amount of the interests at the meeting designate a presiding officer.

(3) Right to Vote. In a chapter 7 liquidation case, a creditor is entitled to vote at a meeting if, at or before the meeting, he has filed a proof of claim or a writing setting forth facts evidencing a right to vote pursuant to § 702(a) of the Code unless objection is made to the claim or the proof of claim is insufficient on its face. If the court orders an election of a separate trustee for a general partner's estate under Rule 2009(e)(1), a creditor of the partnership may file a proof of claim or writing evidencing a right to vote for that trustee notwithstanding that a trustee for the partnership has previously qualified. Notwithstanding objection to the amount or allowability of a claim for the purpose of voting, the court may, after such notice and hearing as it may direct, temporarily allow it for that purpose in an amount that seems proper to the court.

(c) MINUTES AND RECORD OF MEETING. Minutes of the meeting of creditors or equity security holders shall be prepared by the presiding officer. Any examination under oath shall be recorded verbatim by electronic sound recording equipment or other means of recording.

(d) REPORT TO THE COURT. The presiding officer shall transmit to the court the name and address of any person elected trustee or a member of a creditors' committee. If an election is disputed, the presiding officer shall promptly inform the court in writing that a dispute exists. Pending disposition by the court of a disputed election for trustee, the interim trustee shall continue in office. If no motion for the resolution of such election dispute is made to the court within 10 days after the date of the creditors' meeting, the interim trustee shall serve as trustee in the case.

(e) ADJOURNMENT. The meeting may be adjourned from time to time by announcement at the meeting of the adjourned date and time without further written notice.

ADVISORY COMMITTEE NOTE

Section 341(a) of the Code requires a meeting of creditors in a chapter 7, 11 or 13 case, and § 341(b) permits the court to order a meeting of equity security holders. A major change from prior law, however, prohibits the judge from attending or presiding over the meeting. Section 341(c).

This rule does not apply either in a case for the reorganization of a railroad or for the adjustment of debts of a municipality. Sections 1161 and 901 render §§ 341 and 343 inapplicable in these types of cases. Section 341 sets the requirement for a meeting of creditors and § 343 provides for the examination of the debtor.

Subdivision (a). The meeting is to be held between 20 and 40 days after the date of the order for relief. In a voluntary case, the date of the order for relief is the date of the filing of the petition (§ 301 of the Code); in an involuntary case, it is the date of an actual order (§ 303(i) of the Code).

Subdivision (b) provides flexibility as to who will preside at the meeting of creditors. The court may designate a person to serve as presiding officer, such as the interim trustee appointed under § 701 of the Code. If the court does not designate anyone, the clerk will preside. In either case, creditors may elect a person of their own choosing. In any event, the clerk may remain to record the proceedings and take appearances. Use of the clerk is not contrary to the legislative policy of § 341(c). The judge remains insulated from any information coming forth at the meeting and any information obtained by the clerk must not be relayed to the judge.

Although the clerk may preside at the meeting, the clerk is not performing any kind of judicial role, nor should the clerk give any semblance of performing such a role. It would be pretentious for the clerk to ascend the bench, don a robe or be addressed as "your honor". The clerk should not appear to parties or others as any type of judicial officer.

In a chapter 11 case, if a committee of unsecured creditors has been appointed pursuant to § 1102(a)(1) of the Code and a chairman has been selected, the chairman will preside or a person, such as the attorney for the committee, may be designated to preside by the chairman.

Since the judge must fix the bond of the trustee but cannot be present at the meeting, the rule allows the creditors to recommend the amount of the bond. They should be able to obtain relevant information concerning the extent of assets of the debtor at the meeting.

Paragraph (1) authorizes the presiding officer to administer oaths. This is important because the debtor's examination must be under oath.

Paragraph (3) of subdivision (b) has application only in a chapter 7 case. That is the only type of case under the Code that permits election of a trustee or committee. In all other cases, no vote is taken at the meeting of creditors. If it is necessary for the court to make a determination with respect to a claim, the meeting may be adjourned until the objection or dispute is resolved.

The second sentence recognizes that partnership creditors may vote for a trustee of a partner's estate along with the separate creditors of the partner. Although § 723(c) gives the trustee of a partnership a claim against a partner's estate for the full amount of partnership creditors' claims allowed, the purpose and function of this provision are to simplify distribution and prevent double proof, not to disfranchise partnership creditors in electing a trustee of an estate against which they hold allowable claims.

Subdivision (c) requires minutes and a record of the meeting to be maintained by the presiding officer. A verbatim record must be made of the debtor's examination but the rule is flexible as to the means used to record the examination.

Subdivision (d) recognizes that the court must be informed immediately about the election or nonelection of a trustee in a chapter 7 case. Pursuant to Rule 2008, the clerk officially informs the trustee of his election or appointment and how he is to qualify. The presiding person has no authority to resolve a disputed election.

For purposes of expediency, the results of the election should be obtained for each alternative presented by the dispute and immediately reported to the court. Thus, when an interested party presents the dispute to the court, its prompt resolution by the court will determine the dispute and a new or adjourned meeting to conduct the election may be avoided. The clerk is not an interested party.

A creditors' committee may be elected only in a chapter 7 case. In chapter 11 cases, a creditors' committee is appointed pursuant to § 1102.

While a final meeting is not required, Rule 2002(f)(10) provides for the trustee's final account to be sent to creditors.

Rule 2004. Examination

(a) EXAMINATION ON MOTION. On motion of any party in interest, the court may order the examination of any person.

(b) SCOPE OF EXAMINATION. The examination of any person under this rule or of the debtor under § 343 of the Code may relate only to the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge. In an individual's debt adjustment case under chapter 13 or a reorganization case under chapter 11 of the Code, other than for the reorganization of a railroad, the examination may also relate to the operation of any business and the desirability of its continuance, the source of any money or property acquired or to be acquired by the debtor for purposes of consummating a plan and the consideration given or offered therefor, and any other matter relevant to the case or to the formulation of a plan.

(c) COMPELLING ATTENDANCE AND PRODUCTION OF DOCUMENTARY EVIDENCE. The attendance of any person for examination and the production of documentary evidence may be compelled in the manner provided in Rule 9016 for the attendance of witnesses at a hearing or trial.

(d) TIME AND PLACE OF EXAMINATION OF DEBTOR. The court may for cause shown and on terms as it may impose order the debtor to be examined under this rule at any time or place it designates, whether within or without the district wherein the case is pending.

(e) MILEAGE. A person other than a debtor shall not be required to attend as a witness unless lawful mileage and witness fee for one day's attendance shall be first tendered. If the debtor resides more than 100 miles from the place of examination when required to appear for an examination under this rule, the mileage allowed by law to a witness shall be tendered for any distance more than 100 miles from the debtor's residence at the date of the filing of the first petition commencing a case under the Code or the residence at the time the debtor is required to appear for the examination, whichever is the lesser.

ADVISORY COMMITTEE NOTE

Subdivision (a) of this rule is derived from former Bankruptcy Rule 205(a). See generally 2 Collier, Bankruptcy ¶¶ 343.02, 343.08, 343.13 (15th ed. 1981). It specifies the manner of moving for an examination. The motion may be heard ex parte or it may be heard on notice.

Subdivision (b) is derived from former Bankruptcy Rules 205(d) and 11-26.

Subdivision (c) specifies the mode of compelling attendance of a witness or party for an examination and for the production of

evidence under this rule. The subdivision is substantially declaratory of the practice that had developed under § 21a of the Act. See 2 Collier, supra ¶ 343.11.

This subdivision will be applicable for the most part to the examination of a person other than the debtor. The debtor is required to appear at the meeting of creditors for examination. The word "person" includes the debtor and this subdivision may be used if necessary to obtain the debtor's attendance for examination.

Subdivision (d) is derived from former Bankruptcy Rule 205(f) and is not a limitation on subdivision (c). Any person, including the debtor, served with a subpoena within the range of a subpoena must attend for examination pursuant to subdivision (c). Subdivision (d) applies only to the debtor and a subpoena need not be issued. There are no territorial limits on the service of an order on the debtor. See, e.g., In re Totem Lodge & Country Club, Inc., 134 F. Supp. 158 (S.D.N.Y. 1955).

Subdivision (e) is derived from former Bankruptcy Rule 205(g). The lawful mileage and fee for attendance at a United States court as a witness are prescribed by 28 U.S.C. § 1821.

Definition of debtor. The word "debtor" as used in this rule includes the persons specified in the definition in Rule 9001(5).

Spousal privilege. The limitation on the spousal privilege formerly contained in § 21a of the Act is not carried over in the Code. For privileges generally, see Rule 501 of the Federal Rules of Evidence made applicable in cases under the Code by Rule 1101 thereof.

Rule 2005. Apprehension and Removal of Debtor to Compel Attendance for Examination

(a) ORDER TO COMPEL ATTENDANCE FOR EXAMINATION. On motion of any party in interest supported by an affidavit alleging (1) that the examination of the debtor is necessary for the proper administration of the estate and that there is reasonable cause to believe that the

debtor is about to leave or has left his residence or principal place of business to avoid examination, or (2) that the debtor has evaded service of a subpoena or of an order to attend for examination, or (3) that the debtor has willfully disobeyed a subpoena or order to attend for examination, duly served, the court may issue to the marshal, or some other officer authorized by law, an order directing the officer to bring the debtor before the court without unnecessary delay. If, after hearing, the court finds the allegations to be true, the court shall thereupon cause the debtor to be examined forthwith. If necessary, the court shall fix conditions for further examination and for the debtor's obedience to all orders made in reference thereto.

(b) REMOVAL. Whenever any order to bring the debtor before the court is issued under this rule and the debtor is found in a district other than that of the court issuing the order, the debtor may be taken into custody under the order and removed in accordance with the following rules:

(1) If taken at a place less than 100 miles from the place of issue of the order, the debtor shall be brought forthwith before the court that issued the order.

(2) If taken at a place 100 miles or more from the place of issue of the order, the debtor shall be brought

without unnecessary delay before the nearest federal magistrate, bankruptcy judge, or district judge. If, after hearing, the magistrate, bankruptcy judge, or district judge finds that an order has issued under this rule and that the person in custody is the debtor, or if the person in custody waives a hearing, the magistrate, bankruptcy judge, or district judge shall issue an order of removal and the person in custody shall be released on conditions assuring prompt appearance before the court which issued the order to compel the attendance.

(c) CONDITIONS OF RELEASE. In determining what conditions will reasonably assure attendance or obedience under subdivision (a) of this rule or appearance under subdivision (b) of this rule, the court shall be governed by the provisions and policies of title 18, U.S.C., § 3146(a) and (b).

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 206. The rule requires the debtor to be examined as soon as possible if allegations of the movant for compulsory examination under this rule are found to be true after a hearing. Subdivision (b) includes in paragraphs (1) and (2) provisions adapted from subdivisions (a) and (b) of Rule 40 of the Federal Rules of Criminal Procedure, which governs the handling of a person arrested in one district on a warrant issued in another. Subdivision (c) incorporates by reference the features of subdivisions (a) and (b) of 18 U.S.C. § 3146, which prescribe standards, procedures and factors to be considered in determining conditions of release of accused persons in noncapital cases prior to trial. The word "debtor" as used in this rule includes the persons named in Rule 9001(5).

The affidavit required to be submitted in support of the motion may be subscribed by the unsworn declaration provided for in 28 U.S.C. § 1746.

Rule 2006. Solicitation and Voting of Proxies in Chapter 7 Liquidation Cases

(a) APPLICABILITY. This rule applies only in a liquidation case pending under chapter 7 of the Code.

(b) DEFINITIONS.

(1) Proxy. A proxy is a written power of attorney authorizing any person to vote the claim or otherwise act as the owner's attorney in fact in connection with the administration of the estate.

(2) Solicitation of Proxy. The solicitation of a proxy is any communication, other than one from an attorney to a regular client who owns a claim or from an attorney to the owner of a claim who has requested the attorney to represent the owner, by which a creditor is asked, directly or indirectly, to give a proxy after or in contemplation of the filing of a petition by or against the debtor.

(c) AUTHORIZED SOLICITATION.

(1) A proxy may be solicited only by (A) a creditor owning an allowable unsecured claim against the estate on the date of the filing of the petition; (B) a committee

elected pursuant to § 705 of the Code; (C) a committee of creditors selected by a majority in number and amount of claims of creditors (i) whose claims are not contingent or unliquidated, (ii) who are not disqualified from voting under § 702(a) of the Code and (iii) who were present or represented at a meeting of which all creditors having claims of over $500 or the 100 creditors having the largest claims had at least five days notice in writing and of which meeting written minutes were kept and are available reporting the names of the creditors present or represented and voting and the amounts of their claims; or (D) a bona fide trade or credit association, but such association may solicit only creditors who were its members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition.

(2) A proxy may be solicited only in writing.

(d) SOLICITATION NOT AUTHORIZED. This rule does not permit solicitation (1) in any interest other than that of general creditors; (2) by or on behalf of any custodian; (3) by the interim trustee or by or on behalf of any person not qualified to vote under § 702(a) of the Code; (4) by or on behalf of an attorney at law; or (5) by or on behalf of a transferee of a claim for collection only.

(e) DATA REQUIRED FROM HOLDERS OF MULTIPLE PROXIES. At any time before the voting commences at any meeting of creditors pursuant to Rule 2003, or at any other time as the court may direct, a holder of two or more proxies shall file with the clerk a verified list of the proxies to be voted and a verified statement of the pertinent facts and circumstances in connection with the execution and delivery of each proxy, including:

(1) a copy of the solicitation;

(2) identification of the solicitor, the forwarder, if he is neither the solicitor nor the owner of the claim, and the proxyholder, including their connections with the debtor and with each other. If the solicitor, forwarder, or proxyholder is an association, there shall also be included a statement that the creditors whose claims have been solicited and the creditors whose claims are to be voted were members or subscribers in good standing and had allowable unsecured claims on the date of the filing of the petition. If the solicitor, forwarder, or proxyholder is a committee of creditors, the statement shall also set forth the date and place the committee was organized, that the committee was organized in accordance with clause (B) or (C) of paragraph (c)(1) of

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this rule, the members of the committee, the amounts of their claims, when the claims were acquired, the amounts paid therefor, and the extent to which the claims of the committee members are secured or entitled to priority;

(3) a statement that no consideration has been paid or promised by the proxyholder for the proxy;

(4) a statement as to whether there is any agreement and, if so, the particulars thereof, between the proxyholder and any other person for the payment of any consideration in connection with voting the proxy, or for the sharing of compensation with any person, other than a member or regular associate of his law firm, which may be allowed the trustee or any person for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(5) if the proxy was solicited by a person other than the proxyholder, or forwarded to the holder by a person who is neither a solicitor of the proxy nor the owner of the claim, a statement signed and verified by the solicitor or forwarder that no consideration has been paid or promised by him for the proxy, and whether there is any agreement, and, if so, the particulars thereof,

between the solicitor or forwarder and any other person for the payment of any consideration in connection with voting the proxy, or for sharing compensation with any person other than a member or regular associate of his law firm which may be allowed the trustee or any person for services rendered in the case, or for the employment of any person as attorney, accountant, appraiser, auctioneer, or other employee for the estate;

(6) if the solicitor, forwarder, or proxyholder is a committee, a statement signed and verified by each member as to the amount and source of any consideration paid or to be paid to such member in connection with the case other than by way of dividend on his claim.

(f) ENFORCEMENT OF RESTRICTIONS ON SOLICITATION. On motion of any party in interest or on its own initiative, the court may determine whether there has been a failure to comply with the provisions of this rule or any other impropriety in connection with the solicitation or voting of a proxy. After notice and a hearing the court may reject any proxy for cause, vacate any order entered in consequence of the voting of any proxy which should have been rejected, or take any other appropriate action.

ADVISORY COMMITTEE NOTE

This rule is a comprehensive regulation of solicitation and voting of proxies in liquidation cases. It is derived from former Bankruptcy Rule 208. The rule applies only in chapter 7 cases because no voting occurs, other than on a plan, in a chapter 11 case. Former Bankruptcy Rule 208 did not apply to solicitations of acceptances of plans.

Creditor control was a basic feature of the Act and is continued, in part, by the Code. Creditor democracy is perverted and the congressional objective frustrated, however, if control of administration falls into the hands of persons whose principal interest is not in what the estate can be made to yield to the unsecured creditors but in what it can yield to those involved in its administration or in other ulterior objectives.

Subdivision (b). The definition of proxy in the first paragraph of subdivision (b) is derived from former Bankruptcy Rule 208.

Subdivision (c). The purpose of the rule is to protect creditors against loss of control of administration of their debtors' estates to holders of proxies having interests that differ from those of the creditors. The rule does not prohibit solicitation but restricts it to those who were creditors at the commencement of the case or their freely and fairly selected representatives. The special role occupied by credit and trade associations is recognized in the last clause of subdivision (c)(1). On the assumption that members or subscribers may have affiliated with an association in part for the purpose of obtaining its services as a representative in liquidation proceedings, an established association is authorized to solicit its own members, or its regular customers or clients, who were creditors on the date of the filing of the petition. Although the association may not solicit nonmembers or nonsubscribers for proxies, it may sponsor a meeting of creditors at which a committee entitled to solicit proxies may be selected in accordance with clause (C) of subdivision (c)(1).

Under certain circumstances, the relationship of a creditor, creditors' committee, or association to the estate or the case may be such as to warrant rejection of any proxy solicited by such a person or group. Thus a person who is forbidden by the Code to vote his own claim should be equally disabled to solicit proxies from creditors. Solicitation by or on behalf of the debtor has been uniformly condemned, e.g., In re White, 15 F.2d 371 (9th Cir. 1926), as has solicitation on behalf of a preferred creditor, Matter of Law, 13 Am.B.R. 650 (S.D. Ill. 1905). The prohibition on solicitation by a

receiver or his attorney made explicit by General Order 39 has been collaterally supported by rulings rejecting proxies solicited by a receiver in equity, In re Western States Bldg.-Loan Ass'n, 54 F.2d 415 (S.D. Cal. 1931), and by an assignee for the benefit of creditors, Lines v. Falstaff Brewing Co., 233 F.2d 927 (9th Cir. 1956).

Subdivision (d) prohibits solicitation by any person or group having a relationship described in the preceding paragraph. It also makes no exception for attorneys or transferees of claims for collection. The rule does not undertake to regulate communications between an attorney and his regular client or between an attorney and a creditor who has asked the attorney to represent him in a proceeding under the Code, but any other communication by an attorney or any other person or group requesting a proxy from the owner of a claim constitutes a regulated solicitation. Solicitation by an attorney of a proxy from a creditor who was not a client prior to the solicitation is objectionable not only as unethical conduct as recognized by such cases as In the Matter of Darland Company, 184 F. Supp. 760 (S.D. Iowa 1960) but also and more importantly because the practice carries a substantial risk that administration will fall into the hands of those whose interest is in obtaining fees from the estate rather than securing dividends for creditors. The same risk attaches to solicitation by the holder of a claim for collection only.

Subdivision (e). The regulation of solicitation and voting of proxies is achieved by the rule principally through the imposition of requirements of disclosure on the holders of two or more proxies. The disclosures must be made to the clerk before the meeting at which the proxies are to be voted to afford the clerk or a party in interest an opportunity to examine the circumstances accompanying the acquisition of the proxies in advance of any exercise of the proxies. In the light of the examination the clerk or a party in interest should bring to the attention of the judge any question that arises and the judge may permit the proxies that comply with the rule to be voted and reject those that do not unless the holders can effect or establish compliance in such manner as the court shall prescribe. The holders of single proxies are excused from the disclosure requirements because of the insubstantiality of the risk that such proxies have been solicited, or will be voted, in an interest other than that of general creditors.

Every holder of two or more proxies must include in the submission a verified statement that no consideration has been paid or promised for the proxy, either by the proxyholder or the solicitor or any forwarder of the proxy. Any payment or promise of consideration for a proxy would be conclusive evidence of a purpose

to acquire control of the administration of an estate for an ulterior purpose. The holder of multiple proxies must also include in the submission a verified statement as to whether there is any agreement by the holder, the solicitor, or any forwarder of the proxy for the employment of any person in the administration of an estate or for the sharing of any compensation allowed in connection with the administration of the estate. The provisions requiring these statements implement the policy of the Code expressed in § 504 as well as the policy of this rule to deter the acquisition of proxies for the purpose of obtaining a share in the outlays for administration. Finally the facts as to any consideration moving or promised to any member of a committee which functions as a solicitor, forwarder, or proxyholder must be disclosed by the proxyholder. Such information would be of significance to the court in evaluating the purpose of the committee in obtaining, transmitting, or voting proxies.

Subdivison (f) has counterparts in the local rules referred to in the Advisory Committee's Note to former Bankruptcy Rule 208. Courts have been accorded a wide range of discretion in the handling of disputes involving proxies. Thus the referee was allowed to reject proxies and to proceed forthwith to hold a scheduled election at the same meeting. E.g., In re Portage Wholesale Co., 183 F.2d 959 (7th Cir. 1950); In re McGill, 106 Fed. 57 (6th Cir. 1901); In re Deena Woolen Mills, Inc., 114 F. Supp. 260, 273 (D. Me. 1953); In re Finlay, 3 Am.B.R. 738 (S.D.N.Y. 1900). The bankruptcy judge may postpone an election to permit a determination of issues presented by a dispute as to proxies and to afford those creditors whose proxies are rejected an opportunity to give new proxies or to attend an adjourned meeting to vote their own claims. Cf. In the Matter of Lenrick Sales, Inc., 369 F.2d 439, 442-43 (3d Cir.), cert. denied, 389 U.S. 822 (1967); In the Matter of Construction Supply Corp. 221 F. Supp. 124, 128 (E.D. Va. 1963). This rule is not intended to restrict the scope of the court's discretion in the handling of disputes as to proxies.

Rule 2007. Appointment of Creditors' Committee Organized Before Order for Relief

(a) APPOINTMENT. In a chapter 9 municipality or chapter 11 reorganization case, on application of a party in interest and after notice as the court may direct, the court may appoint as the committee of unsecured creditors

required by § 1102(a) of the Code, members of a committee selected before the order for relief in accordance with subdivision (b) of this rule.

(b) SELECTION OF MEMBERS OF COMMITTEE. The court may find that a committee selected by unsecured creditors before the order for relief in a chapter 9 or chapter 11 case of the Code satisfies the requirements of § 1102(b)(1) of the Code if:

(1) it was selected by a majority in number and amount of claims of unsecured creditors who may vote under § 702(a) of the Code and were present in person or represented at a meeting of which all creditors having unsecured claims of over $1,000 or the 100 unsecured creditors having the largest claims had at least five days notice in writing, and of which meeting written minutes reporting the names of the creditors present or represented and voting and the amounts of their claims were kept and are available for inspection;

(2) all proxies voted at the meeting for the elected committee were solicited pursuant to Rule 2006 and the lists and statements required by subdivision (e) thereof have been filed with the court; and

(3) the organization of the committee was in all other respects fair and proper.

ADVISORY COMMITTEE NOTE

Section 1102(b)(1) of the Code permits the court to appoint as the unsecured creditors' committee, the committee that was selected by creditors before the order for relief. This provision recognizes the propriety of continuing a "prepetition" committee in an official capacity. Such a committee, however, must be found to have been fairly chosen and representative of the different kinds of claims to be represented.

Subdivision (a) does not necessarily require a hearing but does require a party in interest to bring to the court's attention the fact that a prepetition committee had been organized and should be appointed. An application would suffice for this purpose. Party in interest would include the committee, any member of the committee, or any of its agents acting for the committee. Whether or not notice of the application should be given to any other party is left to the discretion of the court.

Subdivision (b) implements § 1102(b)(1). The Code provision allows the court to appoint, as the official § 1102(a) committee, a "prepetition" committee if its members were fairly chosen and the committee is representative of the different kinds of claims. This subdivision of the rule indicates some of the factors the court may consider in determining whether the requirements of § 1102(b)(1) have been satisfied. In effect, the subdivision provides various factors which are similar to those set forth in Rule 2006 with respect to the solicitation and voting of proxies in a chapter 7 liquidation case.

Rule 2008. Notice to Trustee of Selection.

The clerk shall immediately notify the trustee of his selection, how he may qualify and, if applicable, the amount of the bond. The trustee shall notify the court in writing of the acceptance or rejection of the office within five days after receipt of notice of selection.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rule 209(c). The remainder of that rule is inapplicable because its provisions are covered by §§ 701-703, 321 of the Code.

If the person selected as trustee accepts the office, he must qualify within five days after his selection, as required by § 322(a) of the Code.

In districts having a standing trustee for chapter 13 cases, a blanket acceptance of the appointment would be sufficient for compliance by the standing trustee with this rule.

Rule 2009. Trustees for Estates When Joint Administration Ordered

(a) ELECTION OF SINGLE TRUSTEE FOR ESTATES BEING JOINTLY ADMINISTERED. If the court orders a joint administration of two or more estates pursuant to Rule 1015(b), creditors may elect a single trustee for the estates being jointly administered.

(b) RIGHT OF CREDITORS TO ELECT SEPARATE TRUSTEE. Notwithstanding entry of an order for joint administration pursuant to Rule 1015(b) the creditors of any debtor may elect a separate trustee for the estate of the debtor as provided in § 702 of the Code.

(c) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) Chapter 7 Liquidation Cases. The court may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

(2) Chapter 11 Reorganization Cases. If a trustee is ordered, the court may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) Chapter 13 Individual's Debt Adjustment Cases. The court may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(d) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors or equity security holders of the different estates will be prejudiced by conflicts of interest of a common trustee, the court shall order separate trustees for estates being jointly administered.

(e) TRUSTEES FOR PARTNERSHIP AND PARTNERS' INDIVIDUAL ESTATES. Notwithstanding the foregoing provisions of this rule, the trustee of a partnership estate shall also be the trustee of the individual estate of any general partner if the estates are being jointly administered unless the court, for cause shown, either (1) permits the creditors of a general partner to elect a separate trustee or (2) appoints a separate trustee for the individual estate.

(f) SEPARATE ACCOUNTS. The trustee or trustees of estates being jointly administered shall keep separate accounts of the property and distribution of each estate.

ADVISORY COMMITTEE NOTE

This rule is applicable in chapter 7 cases and, in part, in chapter 11 and 13 cases. The provisions in subdivisions (a) and (b) concerning creditor election of a trustee apply only in a chapter 7 case because it is only pursuant to § 702 of the Code that creditors may elect a trustee. Subdivision (c) of the rule applies in chapter 11 and 13 as well as chapter 7 cases; pursuant to § 1104 of the Code, the court may order the appointment of a trustee on application of a party in interest and, pursuant to § 1163 of the Code, the court must appoint a trustee in a railroad reorganization case. Subdivision (c) should not be taken as an indication that more than one trustee may be appointed for a single debtor. Section 1104(c) permits only one trustee for each estate. In a chapter 13 case, if there is no standing trustee, the court is to appoint a person to serve as trustee pursuant to § 1302 of the Code. There is no provision for a trustee in a chapter 9 case, except for a very limited purpose; see § 926 of the Code.

This rule recognizes that economical and expeditious administration of two or more estates may be facilitated not only by the selection of a single trustee for a partnership and its partners, but by such selection whenever estates are being jointly administered pursuant to Rule 1015. See In the Matter of International Oil Co., 427 F.2d 186, 187 (2d Cir. 1970). The rule is derived from former § 5c of the Act and former Bankruptcy Rule 210. The premise of § 5c of the Act was that notwithstanding the potentiality of conflict between the interests of the creditors of the partners and those of the creditors of the partnership, the conflict is not sufficiently serious or frequent in most cases to warrant the selection of separate trustees for the firm and the several partners. Even before the proviso was added to § 5c of the Act in 1938 to permit the creditors of a general partner to elect their separate trustee for his estate, it was held that the court had discretion to permit such an election or to make a separate appointment when a conflict of interest was recognized. In re Wood, 248 Fed. 246, 249-50 (6th Cir.), cert. denied, 247 U.S. 512 (1918); 4 Collier, Bankruptcy ¶ 723.04 (15th ed. 1980). The rule retains in subdivision (e) the features of the practice respecting the selection of a trustee that was developed under § 5 of the Act. Subdivisions (a) and (c) permit the court to authorize election of a single trustee or to make a single appointment when joint administration of estates of other kinds of debtors is ordered, but subdivision (d) requires the court to make a preliminary evaluation of the risks of conflict of interest. If after the election or appointment of a common trustee a

conflict of interest materializes, the court must take appropriate action to deal with it.

Subdivison (f) is derived from § 5e of the Act and former Bankruptcy Rule 210(f) and requires that the common trustee keep a separate account for each estate in all cases that are jointly administered.

Rule 2010. Qualification by Trustee; Proceeding on Bond

(a) BLANKET BOND. The court may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

(b) QUALIFICATION BY FILING ACCEPTANCE. A trustee for whom a blanket bond has been filed shall qualify by filing an acceptance of the election or appointment.

(c) EVIDENCE OF QUALIFICATION. A certified copy of the order approving the trustee's bond or of the acceptance filed under subdivision (b) of this rule shall constitute conclusive evidence of qualification.

(d) PROCEEDING ON BOND. A proceeding on the trustee's bond may be brought by any party in interest in the name of the United States for the use of the person injured by the breach of the condition.

ADVISORY COMMITTEE NOTE

Subdivisions (a) and (b). Subdivision (a) gives authority for approval by the court of a single bond to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case. The cases need not be related in any way. Substantial economies can be effected if a single bond covering a number of different cases can be issued and approved at one time. When a blanket bond is filed, the trustee qualifies under subdivision (b) of the rule by filing an acceptance of the office.

Subdivision (c) prescribes the evidentiary effect of a certified copy of an order approving the trustee's bond given by a trustee under this rule or, when a blanket bond has been authorized, of a certified copy of acceptance. This rule supplements the Federal Rules of Evidence, which apply in bankruptcy cases. See Rule 1101 of the Federal Rules of Evidence. The order of approval should conform to Official Form No. 25. See, however, § 549(c) of the Code which provides only for the filing of the petition in the real estate records to serve as constructive notice of the pendency of the case. See also Rule 2011 which prescribes the evidentiary effect of a certificate that the debtor is a debtor in possession.

Subdivision (d) is derived from former Bankruptcy Rule 212(f). Reference should be made to § 322(a) and (d) of the Code which requires the bond to be filed with the bankruptcy court and places a two year limitation for the commencement of a proceeding on the bond. A bond filed under this rule should conform to Official Form No. 25. A proceeding on the bond of a trustee is governed by the rules in Part VII. See the Note accompanying Rule 7001. See also Rule 9025.

Rule 2011. Evidence of Debtor in Possession

Whenever evidence is required that a debtor is a debtor in possession, the clerk may so certify and the certificate shall constitute conclusive evidence of that fact.

ADVISORY COMMITTEE NOTE

This rule prescribes the evidentiary effect of a certificate issued by the clerk that the debtor is a debtor in possession. See Official Form No. 26. Only chapter 11 of the Code provides for a debtor in possession. See § 1107(a) of the Code. If, however, a trustee is appointed in the chapter 11 case, there will not be a debtor in possession. See §§ 1101(1), 1105 of the Code.

Rule 2012. Substitution of Successor Trustee; Accounting

When a trustee dies, resigns, is removed, or otherwise ceases to hold office during the pendency of a case under the Code:

(1) the successor is automatically substituted as a party in any pending action, proceeding, or matter; and

(2) within the time fixed by the court, the successor trustee shall prepare and file with the court an accounting of the prior administration of the estate.

ADVISORY COMMITTEE NOTE

Paragraph (1) of this rule implements § 325 of the Code. It provides that a pending action or proceeding continues without abatement and that the trustee's successor is automatically substituted as a party whether it be another trustee or the debtor returned to possession, as such party.

Paragraph (2) places it within the responsibility of a successor trustee to file an accounting of the prior administration of the estate. If an accounting is impossible to obtain from the prior trustee because of death or lack of cooperation, prior reports submitted in the earlier administration may be updated.

Rule 2013. Limitation on Appointment or Employment of Trustees, Examiners, Appraisers and Auctioneers

(a) LIMITATION ON APPOINTMENTS. Appointments of trustees and examiners and employment of appraisers and auctioneers shall be made so that the annual aggregate compensation of any person shall not be disproportionate or excessive, giving proper regard to geographic constraints.

(b) RECORD TO BE KEPT. The clerk shall maintain a public record listing fees paid from estates (1) to trustees and attorneys, accountants, appraisers, auctioneers and other professional persons employed by trustees, and (2) to examiners appointed by the court. The record shall include the name and docket number of the case, the name of the individual or firm receiving the fee and the amount of the fee paid. The record shall be maintained chronologically and shall be kept current and open to examination by the public without charge.

(c) SUMMARY OF RECORD. At the close of each annual period, the clerk shall prepare a summary of the public record by individual or firm name, to reflect total fees paid during the preceding year. The summary shall be open to examination by the public without charge.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Rule 213. The first sentence of that rule is omitted because of the provisions in 28 U.S.C. §§ 586 and 604(f) creating panels of private trustees.

The rule is not applicable to standing trustees serving in chapter 13 cases. See § 1302 of the Code.

A basic purpose of the rule is to prevent what Congress has defined as "cronyism." Appointment or employment, whether in a chapter 7 or 11 case, should not center among a small select group of individuals unless the circumstances are such that it would be warranted. The public record of appointments to be kept by the clerk will provide a means for monitoring the appointment process.

Subdivision (b) provides a convenient source for public review of fees paid from debtors' estates in the bankruptcy courts. Thus, public recognition of appointments, fairly distributed and based on professional qualifications and expertise, will be promoted and notions of improper favor dispelled. This rule is in keeping with the findings of the Congressional subcommittees as set forth in the House Report of the Committee on the Judiciary, No. 95-595, 95th Cong., 1st Sess. 89-99 (1977). These findings included the observations that there were frequent appointments of the same person, contacts developed between the bankruptcy bar and the courts, and an unusually close relationship between the bar and the judges developed over the years. A major purpose of the new statute is to dilute these practices and instill greater public confidence in the system. Rule 2013 implements that laudatory purpose.

Rule 2014. Employment of Professional Persons

(a) APPLICATION FOR AND ORDER OF EMPLOYMENT. An order approving the employment of attorneys, accountants, appraisers, auctioneers, agents, or other professional persons pursuant to § 327 or § 1103 of the Code shall be made only on application of the trustee or

committee, stating the specific facts showing the necessity for the employment, the name of the person to be employed, the reasons for his selection, the professional services to be rendered, any proposed arrangement for compensation, and, to the best of the applicant's knowledge, all of the person's connections with the debtor, creditors, or any other party in interest, their respective attorneys and accountants.

(b) SERVICES RENDERED BY MEMBER OR ASSOCIATE OF FIRM OF ATTORNEYS OR ACCOUNTANTS. If, under the Code and this rule, a law partnership or corporation is employed as an attorney, or an accounting partnership or corporation is employed as an accountant, or if a named attorney or accountant is employed, any partner, member, or regular associate of the partnership, corporation or individual may act as attorney or accountant so employed, without further order of the court.

ADVISORY COMMITTEE NOTE

Subdivision (a) is adapted from the second sentence of former Bankruptcy Rule 215(a). The remainder of that rule is covered by § 327 of the Code.

Subdivision (b) is derived from former Bankruptcy Rule 215(f). The compensation provisions are set forth in § 504 of the Code.

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Rule 2015. Duty of Trustee or Debtor in Possession to Keep Records, Make Reports, and Give Notice of Case

(a) TRUSTEE OR DEBTOR IN POSSESSION. A trustee or debtor in possession shall (1) in a chapter 7 liquidation and a chapter 11 reorganization case and if the court so directs within 30 days after entering on his duties file a complete inventory of the property of the debtor unless such an inventory has already been filed; (2) keep a record of receipts and the disposition of money and property received; (3) file the reports and summaries required by § 704(7) of the Code within the times fixed by the court and which shall include a statement, if payments are made to employees, of the amounts of deductions for all taxes required to be withheld or paid for and in behalf of employees and the place where these amounts are deposited; (4) as soon as possible after the commencement of the case, give notice of the case to every person known to be holding money or property subject to withdrawal or order of the debtor, including every bank, savings or building and loan association, public utility company, and landlord with whom the debtor has a deposit, and to every insurance company which has issued a policy having a cash surrender value payable to the debtor, except that notice need not be given to any entity who has

knowledge or has previously been notified of the case; (5) within 30 days after the date of the order confirming a plan or within such other time as the court may fix, file a report with the court concerning the action taken by the trustee or debtor in possession and the progress made in the consummation of the plan and file further reports as the court may direct until the plan has been consummated; (6) after consummation of a plan, file an application for a final decree showing that the plan has been consummated, and the names and addresses, if known, of the holders of claims or interests which have not been surrendered or released in accordance with the provisions of the plan and the nature and amounts of claims or interests, and other facts as may be necessary to enable the court to pass on the provisions to be included in the final decree.

(b) CHAPTER 13 TRUSTEE AND DEBTOR

(1) Business Cases. In a chapter 13 individual's debt adjustment case, when the debtor is engaged in business, the debtor shall perform the duties prescribed by clauses (1) - (4) of subdivision (a) of this rule.

(2) Nonbusiness Cases. In a chapter 13 individual's debt adjustment case, when the debtor is not engaged in business, the trustee shall perform the duties prescribed by clause (2) of subdivision (a) of this rule.

(c) TRANSMISSION OF REPORTS. In a chapter 11 case the court may direct that copies or summaries of annual reports and copies or summaries of other reports shall be mailed to the creditors, equity security holders, and indenture trustees. The court may also direct the publication of summaries of any such reports.

ADVISORY COMMITTEE NOTE

This rule combines the provisions found in former Rules 218, 10-208, 11-30 and 13-208 of the Rules of Bankruptcy Procedure. It specifies various duties which are in addition to those required by §§ 704, 1106, 1302 and 1304 of the Code.

In subdivision (a) the times permitted to be fixed by the court in clause (3) for the filing of reports and summaries may be fixed by local rule or order.

Subdivision (b). This subdivision prescribes duties on either the debtor or trustee in chapter 13 cases, depending on whether or not the debtor is engaged in business (§ 1304 of the Code). The duty of giving notice prescribed by subdivision (a)(4) is not included in a nonbusiness case because of its impracticability.

Subdivision (c) is derived from former Chapter X Rule 10-208(c) which, in turn, was derived from § 190 of the Act. The equity security holders to whom the reports should be sent are those of record at the time of transmittal of such reports.

Rule 2016. Compensation for Services Rendered and Reimbursement of Expenses

(a) APPLICATION FOR COMPENSATION OR REIMBURSEMENT. A person seeking interim or final compensation for services, or reimbursement of necessary expenses, from the estate shall file with the court an

application setting forth a detailed statement of (1) the services rendered, time expended and expenses incurred, and (2) the amounts requested. An application for compensation shall include a statement as to what payments have theretofore been made or promised to the applicant for services rendered or to be rendered in any capacity whatsoever in connection with the case, the source of the compensation so paid or promised, whether any compensation previously received has been shared and whether an agreement or understanding exists between the applicant and any other person for the sharing of compensation received or to be received for services rendered in or in connection with the case, and the particulars of any sharing of compensation or agreement or understanding therefor, except that details of any agreement by the applicant for the sharing of compensation as a member or regular associate of a firm of lawyers or accountants shall not be required. The requirements of this subdivision shall apply to an application for compensation for services rendered by an attorney or accountant even though the application is filed by a creditor or other person.

(b) DISCLOSURE OF COMPENSATION PAID OR PROMISED TO ATTORNEY FOR DEBTOR. Every attorney

for a debtor, whether or not the attorney applies for compensation, shall file with the court on or before the first date set for the meeting of creditors, or at another time as the court may direct, the statement required by § 329 of the Code which shall also set forth whether the attorney has shared or agreed to share the compensation with any other person. The statement shall include the particulars of any such sharing or agreement to share by the attorney, but the details of any agreement for the sharing of the compensation with a member or regular associate of the attorney's law firm shall not be required.

ADVISORY COMMITTEE NOTE

This rule is derived from former Rule 219. Many of the former rule's requirements are, however, set forth in the Code. Section 329 requires disclosure by an attorney of transactions with the debtor, § 330 sets forth the bases for allowing compensation, and § 504 prohibits sharing of compensation. This rule implements those various provisions.

Subdivision (a) includes within its provisions a committee, member thereof, agent, attorney or accountant for the committee when compensation or reimbursement of expenses is sought from the estate.

Regular associate of a law firm is defined in Rule 9001(9) to include any attorney regularly employed by, associated with, or counsel to that law firm. Firm is defined in Rule 9001(6) to include a partnership or professional corporation.

Rule 2017. Examination of Debtor's Transactions with His Attorney

(a) PAYMENT OR TRANSFER TO ATTORNEY BEFORE COMMENCEMENT OF CASE. On motion by any party in interest or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property by the debtor, made directly or indirectly and in contemplation of the filing of a petition under the Code by or against the debtor, to an attorney for services rendered or to be rendered is excessive.

(b) PAYMENT OR TRANSFER TO ATTORNEY AFTER COMMENCEMENT OF CASE. On motion by the debtor or on the court's own initiative, the court after notice and a hearing may determine whether any payment of money or any transfer of property, or any agreement therefor, by the debtor to an attorney after the commencement of a case under the Code is excessive, whether the payment or transfer is made or is to be made directly or indirectly, if the payment, transfer, or agreement therefor is for services in any way related to the case.

ADVISORY COMMITTEE NOTE

This rule is derived from § 60d of the Act and former Bankruptcy Rule 220 and implements § 329 of the Code. Information required to be disclosed by the attorney for a debtor by

§ 329 of the Code and by the debtor in his Statement of Financial Affairs (Item #15 of Form No. 7, Item #20 of Form No. 8) will assist the court in determining whether to proceed under this rule. Section 60d was enacted in recognition of "the temptation of a failing debtor to deal too liberally with his property in employing counsel to protect him in view of financial reverses and probable failure." In re Wood & Henderson, 210 U.S. 246, 253 (1908). This rule, like § 60d of the Act and § 329 of the Code, is premised on the need for and appropriateness of judicial scrutiny of arrangements between a debtor and his attorney to protect the creditors of the estate and the debtor against overreaching by an officer of the court who is in a peculiarly advantageous position to impose on both the creditors and his client. 2 Collier, Bankruptcy ¶ 329.02 (15th ed. 1980); MacLachlan, Bankruptcy 318 (1956). Rule 9014 applies to any contested matter arising under this rule.

This rule is not to be construed to permit post-petition payments or transfers which may be avoided under other provisions of the Code.

Rule 2018. Intervention; Right to Be Heard

(a) PERMISSIVE INTERVENTION. In a case under the Code, after hearing on such notice as the court directs and for cause shown, the court may permit any interested entity to intervene generally or with respect to any specified matter.

(b) INTERVENTION BY ATTORNEY GENERAL OF A STATE. In a chapter 7, 11, or 13 case, the Attorney General of a State may appear and be heard on behalf of consumer creditors if the court determines the appearance is in the public interest, but the Attorney General may not appeal from any judgment, order, or decree in the case.

(c) CHAPTER 9 MUNICIPALITY CASE. The Secretary of the Treasury may, or if requested by the court shall, intervene in a chapter 9 case. Representatives of the state in which the debtor is located may intervene in a chapter 9 case with respect to matters specified by the court.

(d) LABOR UNIONS. In a chapter 9 or 11 case, a labor union or employees' association, representative of employees of the debtor, shall have the right to be heard on the economic soundness of a plan affecting the interests of the employees but it may not appeal from any judgment, order, or decree in the case unless otherwise permitted by law.

(e) SERVICE ON ENTITIES COVERED BY THIS RULE. The court may enter orders governing the service of notice and papers on entities permitted to intervene or be heard pursuant to this rule.

ADVISORY COMMITTEE NOTE

This rule is derived from former Rules 8-210, 9-15 and 10-210 and it implements §§ 1109 and 1164 of the Code.

Pursuant to § 1109 of the Code, parties in interest have a right to be heard and the Securities and Exchange Commission may raise and be heard on any issue but it may not take an appeal. That section is applicable in chapter 9 cases (§ 901 of the Code) and in chapter 11 cases, including cases under subchapter IV thereof for the reorganization of a railroad.

In a railroad reorganization case under subchapter IV of chapter 11, § 1164 also gives the right to be heard to the Interstate Commerce Commission, the Department of Transportation and any

state or local regulatory commission with jurisdiction over the debtor, but these entities may not appeal.

This rule does not apply in adversary proceedings. For intervention in adversary proceedings, see Rule 7024. The rules do not provide any right of compensation to or reimbursement of expenses for intervenors or others covered by this rule. Section 503(b)(3)(D) and (4) is not applicable to the entities covered by this rule.

Subdivision (a) is derived from former Chapter VIII Rule 8-210 and former Chapter X Rule 10-210. It permits intervention of an entity (see § 101(14), (21) of the Code) not otherwise entitled to do so under the Code or this rule. Such a party seeking to intervene must show cause therefor.

Subdivision (b) specifically grants the appropriate state's Attorney General the right to appear and be heard on behalf of consumer creditors when it is in the public interest. See House Rep. No. 95-595, 95th Cong., 1st Sess. (1977) 189. While "consumer creditor" is not defined in the Code or elsewhere, it would include the type of individual entitled to priority under § 507(a)(5) of the Code, that is, an individual who has deposited money for the purchase, lease or rental of property or the purchase of services for the personal, family, or household use of the individual. It would also include individuals who purchased or leased property for such purposes in connection with which there may exist claims for breach of warranty.

This subdivision does not grant the Attorney General the status of party in interest. In other contexts, the Attorney General will, of course, be a party in interest as for example, in representing a state in connection with a tax claim.

Subdivision (c) recognizes the possible interests of the Secretary of the Treasury or of the state of the debtor's locale when a municipality is the debtor. It is derived from former Chapter IX Rule 9-15 and § 85(d) of the Act.

Subdivision (d) is derived from former Chapter X Rule 10-210 which, in turn, was derived from § 206 of the Act. Section 206 has no counterpart in the Code.

Subdivision (e) is derived from former Chapter VIII Rule 8-210(d). It gives the court flexibility in directing the type of future notices to be given intervenors.

Rule 2019. Representation of Creditors and Equity Security Holders in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) DATA REQUIRED. In a chapter 9 municipality or chapter 11 reorganization case, except with respect to a committee appointed pursuant to § 1102 of the Code, every person or committee representing more than one creditor or equity security holder and, unless otherwise directed by the court, every indenture trustee, shall file a verified statement with the clerk setting forth (1) the name and address of the creditor or equity security holder; (2) the nature and amount of the claim or interest and the time of acquisition thereof unless it is alleged to have been acquired more than one year prior to the filing of the petition; (3) a recital of the pertinent facts and circumstances in connection with the employment of the person or indenture trustee, and, in the case of a committee, the name or names of the person or persons at whose instance, directly or indirectly, the employment was arranged or the committee was organized or agreed to act; and (4) with reference to the time of the employment of the person, the organization or formation of the committee, or the appearance in the case of any indenture trustee, the amounts of claims or interests owned

by the person, the members of the committee or the indenture trustee, the times when acquired, the amounts paid therefor, and any sales or other disposition thereof. The statement shall include a copy of the instrument, if any, whereby the person, committee, or indenture trustee is empowered to act on behalf of creditors or equity security holders. A supplemental statement shall be filed promptly, setting forth any material changes in the facts contained in the statement filed pursuant to this subdivision.

(b) FAILURE TO COMPLY; EFFECT. On motion of any party in interest or on its own initiative, the court may (1) determine whether there has been a failure to comply with the provisions of subdivision (a) of this rule or with any other applicable law regulating the activities and personnel of any person, committee, or indenture trustee or any other impropriety in connection with any solicitation and, if it so determines, the court may refuse to permit that person, committee, or indenture trustee to be heard further or to intervene in the case; (2) examine any representation provision of a deposit agreement, proxy, trust mortgage, trust indenture, or deed of trust, or committee or other authorization, and any claim or interest acquired by any person or committee in contemplation or in the course of a

case under the Code and grant appropriate relief; and (3) hold invalid any authority, acceptance, rejection, or objection given, procured, or received by a person or committee who has not complied with this rule or with § 1125(b) of the Code.

ADVISORY COMMITTEE NOTE

This rule is a comprehensive regulation of representation in chapter 9 municipality and in chapter 11 reorganization cases. It is derived from §§ 209-213 of the Act and former Chapter X Rule 10-211.

Subdivision (b) is derived from §§ 212, 213 of the Act. As used in clause (2), "other authorization" would include a power or warrant of attorney which are specifically mentioned in § 212 of the Act. This rule deals with representation provisions in mortgages, trust deeds, etc. to protect the beneficiaries from unfair practices and the like. It does not deal with the validation or invalidation of security interests generally. If immediate compliance is not possible, the court may permit a representative to be heard on a specific matter, but there is no implicit waiver of compliance on a permanent basis.

PART III

CLAIMS AND DISTRIBUTION TO CREDITORS AND EQUITY INTEREST HOLDERS; PLANS

Rule 3001. Proof of Claim

(a) FORM AND CONTENT. A proof of claim is a written statement setting forth a creditor's claim. A proof of claim for wages, salary, or commissions shall conform substantially to Official Form No. 20 or No. 21; any other proof of claim shall conform substantially to Official Form No. 19.

(b) WHO MAY EXECUTE. A proof of claim shall be executed by the creditor or the creditor's authorized agent except as provided in Rules 3004 and 3005.

(c) CLAIM BASED ON A WRITING. When a claim, or an interest in property of the debtor securing the claim, is based on a writing, the original or a duplicate shall be filed with the proof of claim. If the writing has been lost or destroyed, a statement of the circumstances of the loss or destruction shall be filed with the claim.

(d) EVIDENCE OF PERFECTION OF SECURITY INTEREST. If a security interest in property of the debtor is claimed, the proof of claim shall be accompanied by evidence that the security interest has been perfected.

(e) TRANSFERRED CLAIM.

(1) Unconditional Transfer Before Proof Filed. If a claim other than one based on a bond or debenture has been unconditionally transferred before proof of the claim has been filed, the proof of claim may be filed only by the transferee. If the claim has been transferred after the filing of the petition, the proof of claim shall be supported by (A) a statement of the transferor acknowledging the transfer and stating the consideration therefor or (B) a statement of the transferee setting forth the consideration for the transfer and why the transferee is unable to obtain the statement from the transferor.

(2) Unconditional Transfer After Proof Filed. If a claim other than one based on a bond or debenture has been unconditionally transferred after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the original claimant by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed with the clerk within 20 days of the mailing of the notice or within any additional time allowed by the court. If the court finds, after a hearing on notice, that

the claim has been unconditionally transferred, it shall enter an order substituting the transferee for the original claimant, otherwise the court shall enter such order as may be appropriate.

(3) Transfer of Claim for Security Before Proof Filed. If a claim other than one based on a bond or debenture has been transferred for security before proof of the claim has been filed, the transferor or transferee or both may file a proof of claim for the full amount. The proof shall be supported by a statement setting forth the terms of the transfer. If the claim was transferred after the filing of the petition, the proof shall also be supported by (A) a statement of the transferor acknowledging the transfer and stating the consideration therefor, or (B) a statement of the transferee setting forth the consideration for the transfer and why the transferee is unable to obtain the statement from the transferor. If either the transferor or the transferee files a proof of claim, the clerk shall immediately notify the other by mail of the right to join in the filed claim. If both transferor and transferee file proofs of the same claim, the proofs shall be consolidated. After a hearing on notice, the court shall enter such orders respecting

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allowance and voting of the claim, payment of dividends thereon, and participation in the administration of the estate as may be appropriate.

(4) Transfer of Claim for Security After Proof Filed. If a claim other than one based on a bond or debenture has been transferred for security after the proof of claim has been filed, evidence of the terms of the transfer shall be filed by the transferee. The clerk shall immediately notify the original claimant by mail of the filing of the evidence of transfer and that objection thereto, if any, must be filed with the clerk within 20 days of the mailing of the notice or within any additional time allowed by the court. After a hearing on notice, the court shall enter such orders respecting allowance and voting of the claim, payment of dividends thereon, and participation in the administration of the estate as may be appropriate.

(5) Service of Objection; Notice of Hearing. A copy of an objection to the evidence of transfer filed pursuant to paragraph (2) or (4) of this subdivision together with a notice of a hearing shall be mailed or otherwise delivered to the transferee at least 30 days prior to the hearing.

(f) EVIDENTIARY EFFECT. A proof of claim executed and filed in accordance with these rules shall constitute prima facie evidence of the validity and amount of the claim.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rules 301 and 302. The Federal Rules of Evidence, made applicable to cases under the Code by Rule 1101, do not prescribe the evidentiary effect to be accorded particular documents. Subdivision (f) of this rule supplements the Federal Rules of Evidence as they apply to cases under the Code.

Subdivision (c). This subdivision is similar to former Bankruptcy Rule 302(c) and continues the requirement for the filing of any written security agreement and provides that the filing of a duplicate of a writing underlying a claim authenticates the claim with the same effect as the filing of the original writing. Cf. Rules 1001(4) and 1003 of F. R. of Evid.. Subdivision (d) together with the requirement in the first sentence of subdivision (c) for the filing of any written security agreement, is designed to facilitate the determination whether the claim is secured and properly perfected so as to be valid against the trustee.

Subdivision (d). "Satisfactory evidence" of perfection, which is to accompany the proof of claim, would include a duplicate of an instrument filed or recorded, a duplicate of a certificate of title when a security interest is perfected by notation on such a certificate, a statement that pledged property has been in possession of the secured party since a specified date, or a statement of the reasons why no action was necessary for perfection. The secured creditor may not be required to file a proof of claim under this rule if he is not seeking allowance of a claim for a deficiency. But see § 506(d) of the Code.

Subdivision (e). The rule recognizes the differences between an unconditional transfer of a claim and a transfer for the purpose of security and prescribes a procedure for dealing with the rights of the transferor and transferee when the transfer is for security. The rule clarifies the procedure to be followed when a transfer precedes or follows the filing of the petition. The interests of sound administration are served by requiring the post-petition transferee to file with the proof of claim a statement of the transferor

acknowledging the transfer and the consideration for the transfer. Such a disclosure will assist the court in dealing with evils that may arise out of post-bankruptcy traffic in claims against an estate. Monroe v. Scofield, 135 F.2d 725 (10th Cir. 1943); In re Philadelphia & Western Ry., 64 F. Supp. 738 (E.D. Pa. 1946); cf. In re Latham Lithographic Corp., 107 F.2d 749 (2d Cir. 1939). Both paragraphs (1) and (3) of this subdivision, which deal with a transfer before the filing of a proof of claim, recognize that the transferee may be unable to obtain the required statement from the transferor, but in that event a sound reason for such inability must accompany the proof of claim filed by the transferee.

Paragraphs (3) and (4) clarify the status of a claim transferred for the purpose of security. An assignee for security has been recognized as a rightful claimant in bankruptcy. Feder v. John Engelhorn & Sons, 202 F.2d 411 (2d Cir. 1953). An assignor's right to file a claim notwithstanding the assignment was sustained in In re R & L Engineering Co., 182 F. Supp. 317 (S.D. Cal. 1960). Facilitation of the filing of proofs by both claimants as holders of interests in a single claim is consonant with equitable treatment of the parties and sound administration. See In re Latham Lithographic Corp., 107 F.2d 749 (2d Cir. 1939).

Paragraphs (2) and (4) of subdivision (e) deal with the transfer of a claim after proof has been filed. Evidence of the terms of the transfer required to be disclosed to the court will facilitate the court's determination of the appropriate order to be entered because of the transfer.

Paragraph (5) describes the procedure to be followed when an objection is made by the transferor to the transferee's filed evidence of transfer.

Rule 3002. Filing Proof of Claim or Interest

(a) NECESSITY FOR FILING. An unsecured creditor or an equity security holder must file a proof of claim or interest in accordance with this rule for the claim or interest to be allowed, except as provided in Rules 3003, 3004 and 3005.

(b) PLACE OF FILING. A proof of claim or interest shall be filed in accordance with Rule 5005.

(c) TIME FOR FILING. In a chapter 7 liquidation or chapter 13 individual's debt adjustment case, a proof of claim shall be filed within 90 days after the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, except as follows:

(1) On motion of the United States, a state, or subdivision thereof before the expiration of such period and for cause shown, the court may extend the time for filing of a claim by the United States, a state, or subdivision thereof.

(2) In the interest of justice and if it will not unduly delay the administration of the case, the court may extend the time for filing a proof of claim by an infant or incompetent person or the representative of either.

(3) An unsecured claim which arises in favor of a person or becomes allowable as a result of a judgment may be filed within 30 days after the judgment becomes final if the judgment is for the recovery of money or property from that person or denies or avoids the person's interest in property. If the judgment imposes a liability which is not satisfied, or a duty which is not performed

within such period or such further time as the court may permit, the claim shall not be allowed.

(4) A claim arising from the rejection of an executory contract of the debtor may be filed within the time as the court may direct.

(5) If notice of insufficient assets to pay a dividend was given to creditors pursuant to Rule 2002(e), and subsequently the trustee notifies the court that payment of a dividend appears possible, the clerk shall notify the creditors of that fact and that they may file proofs of claim within 90 days after the mailing of the notice.

(6) In a chapter 7 liquidation case, if a surplus remains after all claims allowed have been paid in full, the court may grant an extension of time for the filing of claims against the surplus not filed within the time hereinabove prescribed.

ADVISORY COMMITTEE NOTE

Subdivision (a) of this rule is substantially a restatement of the general requirement that claims be proved and filed. The exceptions refer to Rule 3003 providing for the filing of claims in chapter 9 and 11 cases, and to Rules 3004 and 3005 authorizing claims to be filed by the debtor or trustee and the filing of a claim by a contingent creditor of the debtor.

A secured claim need not be filed or allowed under § 502 or § 506(d) unless a party in interest has requested a determination and allowance or disallowance under § 502.

Subdivision (c) is adapted from former Bankruptcy Rule 302(e) but changes the time limits on the filing of claims in chapter 7 and 13 cases from six months to 90 days after the first date set for the meeting of creditors. The special rule for early filing by a secured creditor in a chapter 13 case, in former Rule 13-302(e)(1) is not continued.

Although the claim of a secured creditor may have arisen before the petition, a judgment avoiding the security interest may not have been entered until after the time for filing claims has expired. Under Rule 3002(c)(3) the creditor who did not file a secured claim may nevertheless file an unsecured claim within the time prescribed. A judgment does not become final for the purpose of starting the 30 day period provided for by paragraph (3) until the time for appeal has expired or, if an appeal is taken, until the appeal has been disposed of. In re Tapp, 61 F. Supp. 594 (W.D. Ky. 1945).

Paragraph (1) is derived from former Bankruptcy Rule 302(e). The governmental unit may move for an extension of the 90 day period. Pursuant to § 501(c) of the Code, if the government does not file its claim within the proper time period, the debtor or trustee may file on its behalf. An extension is not needed by the debtor or trustee because the right to file does not arise until the government's time has expired.

Paragraph (4) is derived from former chapter rules. See, e.g., Rule 11-33(a)(2)(B). In light of the reduced time it is necessary that a party with a claim arising from the rejection of an executory contract have sufficient time to file that claim. This clause allows the court to fix an appropriate time.

Paragraph (5) of subdivision (c) is correlated with the provision in Rule 2002(e) authorizing notification to creditors of estates from which no dividends are anticipated. The clause permits creditors who have refrained from filing claims after receiving notification to be given an opportunity to file when subsequent developments indicate the possibility of a dividend. The notice required by this clause must be given in the manner provided in Rule 2002. The information relating to the discovery of assets will usually be obtained by the clerk from the trustee's interim reports or special notification by the trustee.

Provision is made in Rule 2002(a) and (h) for notifying all creditors of the fixing of a time for filing claims against a surplus under paragraph (6). This paragraph does not deal with the distribution of the surplus. Reference must also be made to § 726(a)(2)(C) and (3) which permits distribution on late filed claims.

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Paragraph (6) is only operative in a chapter 7 case. In chapter 13 cases, the plan itself provides the distribution to creditors which is not necessarily dependent on the size of the estate.

Rule 3003. Filing Proof of Claim or Equity Security Interest in Chapter 9 Municipality or Chapter 11 Reorganization Cases

(a) APPLICABILITY OF RULE. This rule applies in chapter 9 and 11 cases.

(b) SCHEDULE OF LIABILITIES AND LIST OF EQUITY SECUITY HOLDERS.

(1) Schedule of Liabilities. The schedule of liabilities filed pursuant to § 521(1) of the Code shall constitute prima facie evidence of the validity and amount of the claims of creditors, unless they are scheduled as disputed, contingent, or unliquidated. It shall not be necessary for a creditor or equity security holder to file a proof of claim or interest except as provided in subdivision (c)(2) of this rule.

(2) List of Equity Security Holders. The list of equity security holders filed pursuant to Rule 1007(a)(3) shall constitute prima facie evidence of the validity and amount of the equity security interests and it shall not be necessary for the holders of such interests to file a proof of interest.

(c) FILING PROOF OF CLAIM.

(1) Who May File. Any creditor or indenture trustee may file a proof of claim within the time prescribed by subdivision (c)(3) of this rule.

(2) Who Must File. Any creditor or equity security holder whose claim or interest is not scheduled or scheduled as disputed, contingent, or unliquidated shall file a proof of claim or interest within the time prescribed by subdivision (c)(3) of this rule; any creditor who fails to do so shall not be treated as a creditor with respect to such claim for the purposes of voting and distribution.

(3) Time for Filing. The court shall fix and for cause shown may extend the time within which proofs of claim or interest may be filed.

(4) Effect of Filing Claim. A proof of claim or interest executed and filed in accordance with this subdivision shall supersede any scheduling of that claim or interest pursuant to § 521(1) of the Code.

(5) Filing by Indenture Trustee. An indenture trustee may file a claim on behalf of all known or unknown holders of securities issued pursuant to the trust instrument under which it is trustee.

(d) PROOF OF RIGHT TO RECORD STATUS. For the purposes of Rules 3017, 3018 and 3021 and for receiving notices, a person who is not the record holder of a security may file a statement setting forth facts which entitle that person to be treated as the record holder. An objection to the statement may be filed by any party in interest.

ADVISORY COMMITTEE NOTE

Subdivision (a). This rule applies only in chapter 9 and chapter 11 cases. It is adapted from former Chapter X Rule 10-401 and provides an exception to the requirement for filing proofs of claim and interest as expressed in §§ 925 and 1111(a) of the Code.

Subdivision (b). This general statement implements §§ 925 and 1111(a) of the Code.

Subdivision (c). This subdivision permits, in paragraph (1), the filing of a proof of claim but does not make it mandatory. Paragraph (2) requires, as does the Code, filing when a claim is scheduled as disputed, contingent, or unliquidated as to amount. It is the creditor's responsibility to determine if the claim is accurately listed. Notice of the provision of this rule is provided for in Official Form No. 16, the order for the meeting of creditors. In an appropriate case the court may order creditors whose claims are scheduled as disputed, contingent, or unliquidated be notified of that fact but the procedure is left to the discretion of the court.

Subdivision (d) is derived from former Chapter X Rule 10-401(f).

Except with respect to the need and time for filing claims, the other aspects concerning claims covered by Rules 3001 and 3002 are applicable in chapter 9 and 11 cases.

Holders of equity security interests need not file proofs of interest. Voting and distribution participation is dependent on ownership as disclosed by the appropriate records of a transfer agent or the corporate or other business records at the time prescribed in Rules 3017 and 3021.

Rule 3004. Filing of Claims by Debtor or Trustee

If a creditor fails to file a proof of claim on or before the first date set for the meeting of creditors called pursuant to § 341(a) of the Code, the debtor or trustee may do so in the name of the creditor. The clerk shall forthwith mail notice of the filing to the creditor, the debtor and the trustee. The creditor may thereafter file a proof of claim pursuant to Rule 3002 or Rule 3003, which proof when filed shall supersede the proof filed by the debtor or trustee.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rule 303 but conforms with the changes made by § 501(c) of the Code. Rule 303 permitted only the filing of tax and wage claims by the debtor. Section 501(c) of the Code, however, permits the filing by the debtor or trustee on behalf of any creditor.

It is the policy of the Code that debtors' estates should be administered for the benefit of creditors without regard to the dischargeability of their claims. After their estates have been closed, however, discharged debtors may find themselves saddled with liabilities, particularly for taxes, which remain unpaid because of the failure of creditors holding nondischargeable claims to file proofs of claim and receive distributions thereon. The result is that the debtor is deprived of an important benefit of the Code without any fault or omission on the debtor's part and without any objective of the Code being served thereby.

Section 501(c) of the Code authorizes a debtor or trustee to file a proof of claim for any holder of a claim. Although all claims may not be nondischargeable, it may be difficult to determine, in particular, whether tax claims survive discharge. See Plumb, Federal Tax Liens and Priorities in Bankruptcy, 43 Ref. J. 37, 43-44 (1969); 1 Collier, Bankruptcy ¶ 17.14 (14th ed. 1967); 3 id. ¶ 523.06

(15th ed. 1979). To eliminate the necessity of the resolution of this troublesome issue, the option accorded the debtor by the Code does not depend on the nondischargeability of the claim. No serious administrative problems and no unfairness to creditors seemed to develop from adoption of Rule 303, the forerunner to § 501(c). The authority to file is conditioned on the creditor's failure to file the proof of claim on or before the first date set for the meeting of creditors, which is the date a claim must ordinarily be filed in order to be voted in a chapter 7 case. Notice to the creditor is provided to enable him to file a proof of claim pursuant to Rule 3002, which proof, when filed, would supersede the proof filed by the debtor or trustee. Notice to the trustee would serve to alert the trustee to the special character of the proof and the possible need for supplementary evidence of the validity and amount of the claim. If the trustee does not qualify until after a proof of claim is filed by the debtor pursuant to this rule, he should be notified as soon as practicable thereafter.

To the extent the claim is allowed and dividends paid thereon, it will be reduced or perhaps paid in full. If the claim is also filed pursuant to Rule 3005, only one distribution thereon may be made. As expressly required by Rule 3005 and by the purpose of this rule such distribution must diminish the claim.

Rule 3005. Filing of Claim, Acceptance, or Rejection By Guarantor, Surety, Indorser, or Other Codebtor

(a) FILING OF CLAIM. If a creditor has not filed a proof of claim pursuant to Rule 3002(c) or 3003(c), one who is or may be liable with the debtor to that creditor, or who has secured that creditor, may, within 30 days after the expiration of the time for filing claims prescribed by Rule 3002(c) or 3003(c) whichever is applicable, execute and file a proof of claim in the name of the creditor, if known, or if unknown, in his own name. No distribution shall be made on the claim except on satisfactory proof that the original debt

will be diminished by the amount of distribution. The creditor may thereafter file a proof of claim pursuant to Rule 3002(c) or 3003(c) and it shall supersede the proof of claim filed pursuant to the first sentence of this subdivision.

(b) FILING OF ACCEPTANCE OR REJECTION; SUBSTITUTION OF CREDITOR. One who has filed a claim pursuant to the first sentence of subdivision (a) of this rule may file an acceptance or rejection of a plan in the name of the creditor, if known, or if unknown, in his own name but if the creditor files a proof of claim within the time permitted by Rule 3003(c) or files a notice with the court prior to confirmation of a plan of his intention to act in his own behalf, the creditor shall be substituted for the obligor with respect to that claim.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Rules 304 and 10-402. Together with § 501(b) of the Code, the rule makes clear that anyone who may be liable on a debt of the debtor, including a surety, guarantor, indorser, or other codebtor, is authorized to file in the name of the creditor of the debtor.

Subdivision (a). Rule 3002(c) provides the time period for filing proofs of claim in chapter 7 and 13 cases; Rule 3003(c) provides the time, when necessary, for filing claims in a chapter 9 or 11 case.

Subdivision (b). This subdivision applies in chapter 9 and 11 cases as distinguished from chapter 7 cases. It permits voting for or against a plan by an obligor who files a claim in place of the creditor.

Rule 3006. Withdrawal of Claim or Acceptance or Rejection of Plan

A creditor may withdraw a claim as of right by filing a notice of withdrawal, except as provided in this rule. If after a creditor has filed a proof of claim an objection is filed thereto or a complaint is filed against that creditor in an adversary proceeding, or the creditor has accepted or rejected the plan or otherwise has participated significantly in the case, the creditor may not withdraw the claim except on order of the court after a hearing on notice to the trustee or debtor in possession, and any creditors' committee selected pursuant to §§ 705(a) or 1102 of the Code. The order of the court shall contain such terms and conditions as the court deems proper. Unless the court orders otherwise, an authorized withdrawal of a claim shall constitute withdrawal of any related acceptance or rejection of a plan.

ADVISORY COMMITTEE NOTE

This rule is derived from former Rules 305 and 10-404.

Since 1938 it has generally been held that Rule 41 F.R.Civ.P. governs the withdrawal of a proof of claim. In re Empire Coal Sales Corp., 45 F. Supp. 974, 976 (S.D.N.Y.), aff'd sub nom. Kleid v. Ruthbell Coal Co., 131 F.2d 372, 373 (2d Cir. 1942); Kelso v. MacLaren, 122 F.2d 867, 870 (8th Cir. 1941); In re Hills, 35 F. Supp. 532, 533 (W.D. Wash. 1940). Accordingly the cited cases held that after an objection has been filed a proof of claim may be withdrawn only subject to approval by the court. This constitutes a restriction of the right of withdrawal as recognized by some though by no means all of the cases antedating the promulgation of the Federal

Rules of Civil Procedure. See 3 Collier, Bankruptcy ¶ 57.12 (14th ed. 1961); Note, 20 Bost. U. L. Rev. 121 (1940).

The filing of a claim does not commence an adversary proceeding but the filing of an objection to the claim initiates a contest that must be disposed of by the court. This rule recognizes the applicability of the considerations underlying Rule 41(a) F.R.Civ.P. to the withdrawal of a claim after it has been put in issue by an objection. Rule 41(a)(2) F.R.Civ.P. requires leave of court to obtain dismissal over the objection of a defendant who has pleaded a counterclaim prior to the service of the plaintiff's motion to dismiss. Although the applicability of this provision to the withdrawal of a claim was assumed in Conway v. Union Bank of Switzerland, 204 F.2d 603, 608 (2d Cir. 1953), Kleid v. Ruthbell Coal Co., supra, Kelso v.MacLaren, supra, and In re Hills, supra, this rule vests discretion in the court to grant, deny, or condition the request of a creditor to withdraw, without regard to whether the trustee has filed a merely defensive objection or a complaint seeking an affirmative recovery of money or property from the creditor.

A number of pre-1938 cases sustained denial of a creditor's request to withdraw proof of claim on the ground of estoppel or election of remedies. 2 Remington, Bankruptcy 186 (Henderson ed. 1956); cf. 3 Collier, supra ¶ 57.12, at 201 (1964). Voting a claim for a trustee was an important factor in the denial of a request to withdraw in Standard Varnish Works v. Haydock, 143 Fed. 318, 319-20 (6th Cir. 1906), and In re Cann, 47 F.2d 661, 662 (W.D. Pa. 1931). And it has frequently been recognized that a creditor should not be allowed to withdraw a claim after accepting a dividend. In re Friedmann, 1 Am. B. R. 510, 512 (Ref., S.D.N.Y. 1899); 3 Collier 205 (1964); cf. In re O'Gara Coal Co., 12 F.2d 426, 429 (7th Cir.), cert. denied, 271 U.S. 683 (1926). It was held in Industrial Credit Co. v. Hazen, 222 F.2d 225 (8th Cir. 1955), however, that although a claimant had participated in the first meeting of creditors and in the examination of witnesses, the creditor was entitled under Rule 41(a)(1) F.R.Civ.P. to withdraw the claim as of right by filing a notice of withdrawal before the trustee filed an objection under § 57g of the Act. While this rule incorporates the post-1938 case law referred to in the first paragraph of this note, it rejects the inference drawn in the Hazen case that Rule 41(a) F.R.Civ.P. supersedes the pre-1938 case law that vests discretion in the court to deny or restrict withdrawal of a claim by a creditor on the ground of estoppel or election of remedies. While purely formal or technical participation in a case by a creditor who has filed a claim should not deprive the creditor of the right to withdraw the claim, a creditor who has accepted a dividend or who has voted in the

election of a trustee or otherwise participated actively in proceedings in a case should be permitted to withdraw only with the approval of the court on terms it deems appropriate after notice to the trustee. 3 Collier 205-06 (1964).

Rule 3007. Objections to Claims

An objection to the allowance of a claim shall be in writing and filed with the court. A copy of the objection with notice of the hearing thereon shall be mailed or otherwise delivered to the claimant, the debtor or debtor in possession and the trustee at least 30 days prior to the hearing. If an objection to a claim is joined with a demand for relief of the kind specified in Rule 7001, it becomes an adversary proceeding.

ADVISORY COMMITTEE NOTE

This rule is derived from § 47a(8) of the Act and former Bankruptcy Rule 306. It prescribes the manner in which an objection to a claim shall be made and notice of the hearing thereon given to the claimant. The requirement of a writing does not apply to an objection to the allowance of a claim for the purpose of voting for a trustee or creditors' committee in a chapter 7 case. See Rule 2003.

The contested matter initiated by an objection to a claim is governed by rule 9014, unless a counterclaim by the trustee is joined with the objection to the claim. The filing of a counterclaim ordinarily commences an adversary proceeding subject to the rules in Part VII.

While the debtor's other creditors may make objections to the allowance of a claim, the demands of orderly and expeditious administration have led to a recognition that the right to object is generally exercised by the trustee. Pursuant to § 502(a) of the Code, however, any party in interest may object to a claim. But under § 704 the trustee, if any purpose would be served thereby, has the duty to examine proofs of claim and object to improper claims.

By virtue of the automatic allowance of a claim not objected to, a dividend may be paid on a claim which may thereafter be disallowed on objection made pursuant to this rule. The amount of the dividend paid before the disallowance in such event would be recoverable by the trustee in an adversary proceeding.

Rule 3008. Reconsideration of Claims

A party in interest may move for reconsideration of an order allowing or disallowing a claim against the estate. The court after a hearing on notice shall enter an appropriate order.

ADVISORY COMMITTEE NOTE

Section 502(j) of the Code deals only with the reconsideration of allowed claims as did former § 57k of the Act and General Order 21(b). It had sometimes been held that a referee had no jurisdiction to reconsider a disallowed claim, or the amount or priority of an allowed claim, at the instance of the claimant. See, e.g., In re Gouse, 7 F. Supp. 106 (M.D. Pa. 1934); In re Tomlinson & Dye, Inc., 3 F. Supp. 800 (N.D. Okla. 1933). This view disregarded § 2a(2) of the Act and the "ancient and elementary power" of a referee as a court to reconsider orders. In re Pottasch Brow. Co., Inc., 79 F.2d 613, 616 (2d Cir. 1935); Castaner v. Mora, 234 F.2d 710 (1st Cir. 1956). This rule recognizes, as did former Bankruptcy Rule 307, the power of the court to reconsider an order of disallowance on appropriate motion.

Reconsideration of a claim that has been previously allowed or disallowed after objection is discretionary with the court. The right to seek reconsideration of an allowed claim, like the right to object to its allowance, is generally exercised by the trustee if one has qualified and is performing the duties of that office with reasonable diligence and fidelity. A request for reconsideration of a disallowance would, on the other hand, ordinarily come from the claimant.

A proof of claim executed and filed in accordance with the rules in this Part III is prima facie evidence of the validity and the amount of the claim notwithstanding a motion for reconsideration of an order of allowance. Failure to respond does not constitute an

admission, though it may be deemed a consent to a reconsideration. In re Goble Boat Co., 190 Fed. 92 (N.D.N.Y. 1911). The court may decline to reconsider an order of allowance or disallowance without notice to any adverse party and without affording any hearing to the movant. If a motion to reconsider is granted, notice and hearing must be afforded to parties in interest before the previous action in the claim taken in respect to the claim may be vacated or modified. After reconsideration, the court may allow or disallow the claim, increase or decrease the amount of a prior allowance, accord the claim a priority different from that originally assigned it, or enter any other appropriate order.

The rule expands § 502(j) which provides for reconsideration of an allowance only before the case is closed. Authorities have disagreed as to whether reconsideration may be had after a case has been reopened. Compare 3 Collier, Bankruptcy ¶ 57.23[4] (14th ed. 1964), see generally 3 id. ¶ 502.10 (15th ed. 1979), with 2 Remington, Bankruptcy 498 (Henderson ed. 1956). If a case is reopened as provided in § 350(b) of the Code, reconsideration of the allowance or disallowance of a claim may be sought and granted in accordance with this rule.

Rule 3009. Declaration and Payment of Dividends in Chapter 7 Liquidation Cases

In chapter 7 cases, dividends to creditors shall be paid as promptly as practicable in the amounts and at the times as ordered by the court. Dividend checks shall be made payable and mailed to each creditor whose claim has been allowed, unless a power of attorney authorizing another person to receive dividends has been executed and filed in accordance with Rule 9010. In that event, dividend checks shall be made payable to the creditor and to the other person and shall be mailed to the other person.

ADVISORY COMMITTEE NOTE

This rule is derived from former Rules 308 and 11-35(a). The preparation of records showing dividends declared and to whom payable is subject to prescription by the Director of the Administrative Office pursuant to Rule 5003(e). The rule governs distributions to creditors having priority as well as to general unsecured creditors. Notwithstanding the detailed statutory provisions regulating the declaration of dividends, a necessarily wide discretion over this matter has been recognized to reside in the court. See 3A Collier, Bankruptcy ¶ 65.03(14th ed. 1975); 1 Proceedings of Seminar for Newly Appointed Referees in Bankruptcy 173 (1964). Although the rule leaves to the discretion of the court the amount and the times of dividend payments, it recognizes the creditors' right to as prompt payment as practicable.

The second and third sentences of the rule make explicit the method of payment of dividends and afford protection of the interests of the creditor and the holder of a power of attorney authorized to receive payment.

The rule does not permit variance at local option. This represents a marked change from former Bankruptcy Rule 308.

Rule 3010. Small Dividends and Payments in Chapter 7 Liquidation and Chapter 13 Individual's Debt Adjustment Cases

(a) CHAPTER 7 CASES. In a chapter 7 case no dividend in an amount less than $5 shall be distributed by the trustee to any creditor unless authorized by local rule or order of the court. Any such dividend not distributed to a creditor shall be treated in the same manner as unclaimed funds as provided in § 347 of the Code.

(b) CHAPTER 13 CASES. In a chapter 13 case no payment in an amount less than $15 shall be distributed by the trustee to any creditor unless authorized by local rule or

order of the court. Funds not distributed because of this subdivision shall accumulate and shall be paid whenever the accumulation aggregates $15. Any funds remaining shall be distributed with the final payment.

ADVISORY COMMITTEE NOTE

This rule permits a court to eliminate the disproportionate expense and inconvenience incurred by the issuance of a dividend check of less than $5 (or $15 in a chapter 13 case). Creditors are more irritated than pleased to receive such small dividends, but the money is held subject to their specific request as are unclaimed dividends under § 347(a) of the Code. When the trustee deposits undistributed dividends pursuant to a direction in accordance with this rule the trustee should file with the clerk a list of the names and addresses, so far as known, of the persons entitled to the money so deposited and the respective amounts payable to them pursuant to Rule 3011. In a chapter 13 case, the small dividend will accumulate and will be payable at the latest, with the final dividend. Local rule or order may change the practice permitted in this rule and, in that connection, the order may be incorporated in the order confirming a chapter 13 plan.

Rule 3011. Unclaimed Funds in Chapter 7 Liquidation and Chapter 13 Individual's Debt Adjustment Cases

The trustee shall file with the clerk a list of all known names and addresses of the persons and the amounts which they are entitled to be paid from remaining property of the estate that is paid into court pursuant to § 347(a) of the Code.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 310. The operative provisions of that rule, however, are contained in § 347(a)

of the Code, requiring the trustee to stop payment of checks remaining unpaid 90 days after distribution. The rule adds the requirement of filing a list of the names and addresses of the persons entitled to these dividends. This rule applies in a chapter 7 or 13 case but not in a chapter 9 or 11 case. The latter cases are governed by § 347(b) of the Code which provides for unclaimed distributions to be returned to the debtor or other entity acquiring the assets of the debtor.

Rule 3012. Valuation of Security

The court may determine the value of a claim secured by a lien on property in which the estate has an interest on motion of any party in interest and after a hearing on notice to the holder of the secured claim and any other person as the court may direct.

ADVISORY COMMITTEE NOTE

Pursuant to § 506(a) of the Code, secured claims are to be valued and allowed as secured to the extent of the value of the collateral and unsecured, to the extent it is enforceable, for the excess over such value. The valuation of secured claims may become important in different contexts, e.g., to determine the issue of adequate protection under § 361, impairment under § 1124, or treatment of the claim in a plan pursuant to § 1129(b) of the Code. This rule permits the issue to be raised on motion by a party in interest. The secured creditor is entitled to notice of the hearing on the motion and the court may direct that others in the case also receive such notice.

An adversary proceeding is commenced when the validity, priority, or extent of a lien is at issue as prescribed by Rule 7001. That proceeding is relevant to the basis of the lien itself while valuation under Rule 3012 would be for the purposes indicated above.

Rule 3013. Classification of Claims and Interests

For the purposes of the plan and its acceptance, the court may, on motion after hearing on notice as the court may direct, determine classes of creditors and equity security holders pursuant to §§ 1122 and 1322(b)(1) of the Code.

ADVISORY COMMITTEE NOTE

Sections 1122 and 1322(b)(1) set the standards for classifying claims and interests but provide that such classification is accomplished in the plan. This rule does not change the standards; rather it recognizes that it may be desirable or necessary to establish proper classification before a plan can be formulated. It provides for a court hearing on such notice as the court may direct.

Rule 3014. Election Pursuant to § 1111(b) by Secured Creditor in Chapter 9 Municipality and Chapter 11 Reorganization Cases

An election of application of § 1111(b)(2) of the Code by a class of secured creditors in a chapter 9 or 11 case may be made at any time prior to the conclusion of the hearing on the disclosure statement or within such later time as the court may fix. The election shall be in writing and signed unless made at the hearing on the disclosure statement. The election, if made by the majorities required by § 1111(b)(1)(A)(i), shall be binding on all members of the class with respect to the plan.

ADVISORY COMMITTEE NOTE

Pursuant to § 1111(b)(1) of the Code, a nonrecourse secured loan is converted, automatically, into a recourse loan thereby entitling the creditor to an unsecured deficiency claim if the value of the collateral is less than the debt. The class, however, may retain the loan as a nonrecourse loan by electing application of § 1111(b)(2) by the majorities stated in § 1111(b)(1)(A)(i). That section does not specify any time periods for making the election.

Rule 3014 provides that if no agreement is negotiated, the election of § 1111(b)(2) of the Code may be made at any time prior to conclusion of the hearing on the disclosure statement. Once the hearing has been concluded, it would be too late for a secured creditor class to demand different treatment unless the court has fixed a later time. This would be the case if, for example, a public class of secured creditors should have an approved disclosure statement prior to electing under § 1111(b).

Generally it is important that the proponent of a plan ascertain the position of the secured creditor class before a plan is proposed. The secured creditor class must know the prospects of its treatment under the plan before it can intelligently determine its rights under § 1111(b). The rule recognizes that there may be negotiations between the proponent of the plan and the secured creditor leading to a representation of desired treatment under § 1111(b). If that treatment is approved by the requisite majorities of the class and culminates in a written, signed statement filed with the court, that statement becomes binding and the class may not thereafter demand different treatment under § 1111(b) with respect to that plan. The proponent of the plan is thus enabled to seek approval of the disclosure statement and transmit the plan for voting in anticipation of confirmation.. Only if that plan is not confirmed may the class of secured creditors thereafter change its prior election.

While this rule and the Code refer to a class of secured creditors it should be noted that ordinarily each secured creditor is in a separate and distinct class. In that event, the secured creditor has the sole power to determine application of § 1111(b) with respect to that claim.

Rule 3015. Filing of Plan in Chapter 13 Individual's Debt Adjustment Cases

The debtor may file a chapter 13 plan with the petition. If a plan is not filed with the petition, it shall be filed within 15 days thereafter and such time shall not be further extended except for cause shown and on notice as the court may direct. Every proposed plan and any modification thereof shall be dated. The clerk shall include the plan or a summary of the plan with each notice of the hearing on confirmation pursuant to Rule 2002(b). If required by the court, the debtor shall furnish a sufficient number of copies to enable the clerk to include a copy of the plan with the notice of the hearing.

ADVISORY COMMITTEE NOTE

Section 1321 provides only that the "debtor shall file a plan." No time periods are specified, nor is any other detail provided. The rule requires a chapter 13 plan to be filed either with the petition or within 15 days thereafter. The court may, for cause, extend the time. The rule permits a summary of the plan to be transmitted with the notice of the hearing on confirmation. The court may, however, require the plan itself to be transmitted and the debtor to supply enough copies for this purpose. In the former rules under Chapter XIII the plan would accompany the notice of the first meeting of creditors. It is more important for the plan or a summary of its terms to be sent with the notice of the confirmation hearing. At that hearing objections to the plan will be heard by the court.

Rule 3016. Filing of Plan and Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) TIME FOR FILING PLAN. A party in interest, other than the debtor, who is authorized to file a plan under § 1121(c) of the Code, may file a plan at any time before the conclusion of the hearing on the disclosure statement or thereafter with leave of court.

(b) IDENTIFICATION OF PLAN. Every proposed plan and any modification thereof shall be dated and, in a chapter 11 case, identified with the name of the person or persons submitting or filing it.

(c) DISCLOSURE STATEMENT. In a chapter 9 or 11 case, a disclosure statement pursuant to § 1125 or evidence showing compliance with § 1126(b) of the Code shall be filed with the plan or within a time fixed by the court.

ADVISORY COMMITTEE NOTE

This rule implements the Code provisions concerning the filing of plans in chapters 9 and 11.

Chapter 9 Cases. Section 941 provides that the debtor may file a plan with the petition or thereafter but within a time fixed by the court. A rule, therefore, is unnecessary to specify the time for filing chapter 9 plans.

Chapter 11 Nonrailroad Cases. Section 1121 contains detailed provisions with respect to who may file a chapter 11 plan and, in part, the time period. Section 1121(a) permits a debtor to file a plan with the petition or at any time during the case. Section 1121(b) and (c) grants exclusive periods of 120 days and 180 days for the debtor

to file and obtain acceptance of a plan. Failure to take advantage of these periods or the appointment of a trustee would permit other parties in interest to file a plan. These statutory provisions are not repeated in the rules.

Chapter 11 Railroad Cases. Pursuant to subchapter IV of chapter 11, § 1121 of the Code is applicable in railroad cases; see §§ 1161, 103(g). A trustee, however, is to be appointed in every case; thus, pursuant to § 1121(c), any party in interest may file a plan. See discussion of subdivision (a) of this rule, infra.

Subdivision (a). Section 1121(c), while permitting parties in interest a limited right to file plans, does not provide any time limitation. This subdivision sets as the deadline, the conclusion of the hearing on the disclosure statement. The court may, however, grant additional time. It is derived from former Chapter X Rule 10-301(c)(2) which used, as the cut-off time, the conclusion of the hearing on approval of a plan. As indicated, supra, § 1121(a) permits a debtor to file a plan at any time during the chapter 11 case. Under § 1121(c), parties other than a debtor may file a plan only after a trustee is appointed or the debtor's exclusive time expires.

Subdivison (b) requires plans to be properly identified.

Subdivision (c). This provision is new. In chapter 9 and 11 cases (including railroad reorganization cases) postpetition solicitation of votes on a plan requires transmittal of a disclosure statement, the contents of which have been approved by the court. See § 1125 of the Code. A prepetition solicitation must either have been in conformity with applicable nonbankruptcy law or, if none, the disclosure must have been of adequate information as set forth in § 1125 of the Code. See § 1126(b). Subdivision (c) of this rule provides the time for filing the disclosure statement or evidence of compliance with § 1126(b) which ordinarily will be with the plan but the court may allow a later time or the court may, pursuant to the last sentence, fix a time certain. Rule 3017 deals with the hearing on the disclosure statement. The disclosure statement, pursuant to § 1125 is to contain adequate information. "Adequate information" is defined in § 1125(a) as information that would permit a reasonable creditor or equity security holder to make an informed judgment on the plan.

Rule 3017. Court Consideration of Disclosure Statement in Chapter 9 Municipality and Chapter 11 Reorganization Cases

(a) HEARING ON DISCLOSURE STATEMENT AND OBJECTIONS THERETO. Following the filing of a disclosure statement as provided in Rule 3016(c), the court shall hold a hearing on not less than 25 days notice to the debtor, creditors, equity security holders and other parties in interest as provided in Rule 2002 to consider such statement and any objections or modifications thereto. The plan and the disclosure statement shall be mailed with the notice of the hearing only to the debtor, trustee, any committee appointed under the Code, the Securities and Exchange Commission and any party in interest who requests in writing a copy of the statement or plan. Objections to the disclosure statement shall be filed with the court and served on the debtor, the trustee, any committee appointed under the Code and such other entity as may be designated by the court, at any time prior to approval of the disclosure statement or by such earlier date as the court may fix.

(b) DETERMINATION ON DISCLOSURE STATEMENT. Following the hearing the court shall determine whether the disclosure statement should be approved.

(c) DATES FIXED FOR VOTING ON PLAN AND CONFIRMATION. On or before approval of the disclosure statement, the court shall fix a time within which the holders of claims and interests may accept or reject the plan and may fix a date for the hearing on confirmation.

(d) TRANSMISSION AND NOTICE TO CREDITORS AND EQUITY SECURITY HOLDERS. On approval of a disclosure statement, the debtor in possession, trustee, proponent of the plan, or clerk as ordered by the court shall mail to all creditors and equity security holders (1) the plan, or a court approved summary of the plan; (2) the disclosure statement approved by the court; (3) notice of the time within which acceptances and rejections of such plan may be filed; (4) notice of any date fixed for the hearing on confirmation; and (5) such other information as the court may direct including any opinion of the court approving the disclosure statement or a court approved summary of the opinion. In addition, a form of ballot conforming to Official Form No. 30 shall be mailed to creditors and equity security holders entitled to vote on the plan. In the event the opinion of the court is not transmitted or only a summary of the plan is transmitted, the opinion of the court or the plan shall be provided on request of a party in interest at the expense of the proponent of the

plan. For the purposes of this subdivision, creditors and equity security holders shall include holders of stock, bonds, debentures, notes, and other securities of record at the date the order approving the disclosure statement was entered.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Rule 10-303 which dealt with the approval of a Chapter X plan by the court. There is no requirement for plan approval in a chapter 9 or 11 case under the Code but there is the requirement that a disclosure statement containing adequate financial information be approved by the court after notice and a hearing before votes on a plan are solicited. Section 1125(b) of the Code is made applicable in chapter 9 cases by § 901(a). It is also applicable in railroad reorganization cases under subchapter IV of chapter 11; see § 1161 of the Code.

Subdivision (a) of this rule provides for the hearing on the disclosure statement. Thus, a hearing would be required in all cases; whether it may be ex parte would depend on the circumstances of the case, but a mere absence of objections would not eliminate the need for a hearing; see § 102(1) of the Code.

No provision similar to former Rule 10-303(f) is included. That subdivision together with former Rule 10-304 prohibited solicitation of votes until after entry of an order approving the plan. Section 1125(b) of the Code explicitly provides that votes on a plan may not be solicited until a disclosure statement approved by the court is transmitted. Pursuant to the change in rulemaking power, a comparable provision in this rule is unnecessary. 28 U.S.C. § 2075.

Copies of the disclosure statement and plan need not be mailed with the notice of the hearing or otherwise transmitted prior to the hearing except with respect to the parties explicitly set forth in the subdivision.

It should be noted that, by construction, the singular includes the plural. Therefore, the phrase "plan or plans" or "disclosure statement or statements" has not been used although the possibility of multiple plans and statements is recognized.

Subdivision (d) permits the court to require a party other than the clerk of the bankruptcy court to bear the responsibility for transmitting the notices and documents specified in the rule when votes on the plan are solicited. Ordinarily the person responsible for such mailing will be the proponent of the plan. In rare cases the clerk may be directed to mail these documents, particularly when the trustee would have the responsibility but there is insufficient money in the estate to enable the trustee to perform this task.

Rule 3018. Acceptance or Rejection of Plans

(a) PERSONS ENTITLED TO ACCEPT OR REJECT PLAN; TIME FOR ACCEPTANCE OR REJECTION. A plan may be accepted or rejected by the following entities within the time fixed by the court pursuant to Rule 3017: (1) any creditor whose claim is deemed allowed pursuant to § 502 of the Code or has been allowed by the court; (2) subject to subdivision (b) of this rule, any creditor who is a security holder of record at the date the order approving the disclosure statement is entered whose claim has not been disallowed; and, (3) an equity security holder of record at the date the order approving the disclosure statement is entered whose interest has not been disallowed. For cause shown and within the time fixed for acceptance or rejection of a plan, the court after notice and hearing may permit a creditor or equity security holder to change or withdraw an acceptance or rejection. Notwithstanding objection to a claim or interest, the court after notice and hearing may temporarily

allow the claim or interest in an amount which the court deems proper for the purpose of accepting or rejecting a plan.

(b) ACCEPTANCES OR REJECTIONS OBTAINED BEFORE PETITION. Acceptances or rejections of a plan may be obtained before the commencement of a case under the Code and may be filed with the court on behalf of (1) the holder of a claim or interest which is deemed allowed pursuant to § 502 of the Code or allowed by the court; (2) a creditor who is a security holder of record at the date specified in the solicitation for the purposes of such solicitation and whose claim has not been disallowed; and (3) an equity security holder of record at the date specified in the solicitation for the purposes of such solicitation and whose interest has not been disallowed. A holder of a claim or interest who has accepted or rejected a plan before the commencement of the case under the Code shall not be deemed to have accepted or rejected the plan if the court finds after notice and hearing that the plan was not transmitted to substantially all impaired creditors and impaired equity security holders, that an unreasonably short time was prescribed for such creditors and equity security holders to accept or reject the plan, or that the solicitation was not in compliance with § 1126(b) of the Code.

(c) FORM OF ACCEPTANCE OR REJECTION. An acceptance or rejection shall be in writing, identify the plan or plans accepted or rejected, be signed by the creditor or equity security holder or his authorized agent, and conform to Official Form No. 30. If more than one plan is transmitted pursuant to Rule 3017, an acceptance or rejection may be filed by each creditor or equity security holder for any number of plans transmitted and if acceptances are filed for more than one plan, the creditor or equity security holder may indicate his preferences among the plans so accepted.

(d) ACCEPTANCE OR REJECTION BY PARTIALLY SECURED CREDITOR. A creditor whose claim has been allowed in part as a secured claim and in part as an unsecured claim shall be entitled to accept or reject a plan in both capacities.

ADVISORY COMMITTEE NOTE

This rule applies in chapter 9, 11 and 13 cases under the Code. The references in the rule to equity security holders will not, however, be relevant in chapter 9 or 13 cases. The rule will be of little utility in a chapter 13 case because only secured creditors may be requested to vote on a plan; unsecured creditors are not entitled to vote; see § 1325(a)(4),(5) of the Code.

Subdivision (a) is derived from former Rule 10-305(a). It substitutes, in a reorganization case, entry of the order approving the disclosure statement for the order approving a plan in conformity with the differences between Chapter X and chapter 11. In keeping with the underlying theory, it continues to recognize that the lapse of time between the filing of the petition and entry of

such order will normally be significant and, during that interim, bonds and equity interests can change ownership.

Subdivision (b) recognizes the former Chapter XI practice permitting a plan and acceptances to be filed with the petition, as does § 1126(b) of the Code. However, because a plan under chapter 11 may affect shareholder interests, there should be reference to a record date of ownership. In this instance the appropriate record date is that used in the prepetition solicitation materials because it is those acceptances or rejections which are being submitted to the court.

While § 1126(c), (d), and (e) prohibits use of an acceptance or rejection not procured in good faith, the added provision in subdivision (b) of the rule is somewhat more detailed. It would prohibit use of prepetition acceptances or rejections when some but not all impaired creditors or equity security holders are solicited or when they are not given a reasonable opportunity to submit their acceptances or rejections. This provision together with § 1126(e) gives the court the power to nullify abusive solicitation procedures.

Subdivision (c). It is possible that multiple plans may be before the court for confirmation. Pursuant to § 1129(c) of the Code, the court may confirm only one plan but is required to consider the preferences expressed by those accepting the plans in determining which one to confirm.

Subdivisions (d) and (e) of former Rule 10-305 are not continued since comparable provisions are contained in the statute; see § 1126(c),(d),(e).

It should be noted that while the singular "plan" is used throughout, by construction the plural is included; see § 102(7).

Rule 3019. Modification of Accepted Plan Before Confirmation

After a plan has been accepted and before its confirmation, the proponent may file a modification of the plan. If the court finds after hearing on notice to the trustee, any committee appointed under the Code and any other

person designated by the court that the proposed modification does not adversely change the treatment of the claim of any creditor or the interest of any equity security holder who has not accepted in writing the modification, it shall be deemed accepted by all creditors and equity security holders who have previously accepted the plan.

ADVISORY COMMITTEE NOTE

This rule implements §§ 942, 1127 and 1323 of the Code. For example, § 1127 provides for modification before and after confirmation but does not deal with the minor modifications that do not adversely change any rights. The rule makes clear that a modification may be made, after acceptance of the plan without submission to creditors and equity security holders if their interests are not affected. To come within this rule, the modification should be one that does not change the rights of a creditor or equity security holder as fixed in the plan before modification.

Rule 3020. Deposit; Confirmation of Plan

(a) DEPOSIT. In a chapter 11 case, prior to entry of the order confirming the plan, the court may order the deposit with the trustee or debtor in possession of the consideration required by the plan to be distributed on confirmation. Any money deposited shall be kept in a special account established for the exclusive purpose of making the distribution.

(b) OBJECTIONS TO AND HEARING ON CONFIRMATION.

(1) Objections. Objections to confirmation of the plan shall be filed with the court and served on the debtor, the trustee, any committee appointed under the Code and on any other entity designated by the court, within a time fixed by the court. An objection to confirmation is governed by Rule 9014.

(2) Hearing. The court shall rule on confirmation of the plan after notice and hearing as provided in Rule 2002. If no objection is timely filed, the court may find, without receiving evidence, that the plan has been proposed in good faith and not by any means forbidden by law.

(c) Order of Confirmation. The order of confirmation shall conform to Official Form No. 31 and notice of entry thereof shall be mailed promptly by the clerk to the debtor, creditors, equity security holders and other parties in interest.

(d) Retained Power. Notwithstanding the entry of the order of confirmation, the court may enter all orders necessary to administer the estate.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Rules 10-307, 11-38, and 13-213. It applies to cases filed under chapters 9, 11 and 13. Certain subdivisions of the earlier rules have not been included, such as, a

subdivision revesting title in the debtor because § 541 of the Code does not transfer title out of the debtor as did § 70a of the Bankruptcy Act; see also §§ 1141(b), 1327(b). Subdivision (b) of former Rule 13-213 is not included because its provisions are contained in the statute; see §§ 1322, 1325(b), 105.

Subdivision (a) gives discretion to the court to require in chapter 11 cases the deposit of any consideration to be distributed on confirmation. If money is to be distributed, it is to be deposited in a special account to assure that it will not be used for any other purpose. The Code is silent in chapter 11 with respect to the need to make a deposit or the person with whom any deposit is to be made. Consequently, there is no statutory authority for any person to act in a capacity similar to the disbursing agent under former Chapter XI practice. This rule provides that only the debtor in possession or trustee should be appointed as the recipient of the deposit. Any consideration other than money, e.g., notes or stock may be given directly to the debtor in possession or trustee and need not be left in any kind of special account. In chapter 9 cases, § 944(b) provides for deposit with a disbursing agent appointed by the court of any consideration to be distributed under the plan.

Subdivision (d) clarifies the authority of the court to conclude matters pending before it prior to confirmation and to continue to administer the estate as necessary, e.g., resolving objections to claims.

Rule 3021. Distribution Under Plan

After confirmation of a plan, distribution shall be made to creditors whose claims have been allowed, to holders of stock, bonds, debentures, notes, and other securities of record at the time of commencement of distribution whose claims or equity security interests have not been disallowed and to indenture trustees who have filed claims pursuant to Rule 3003(c)(5) and which have been allowed.

ADVISORY COMMITTEE NOTE

This rule is derived from former Chapter X Rule 10-405(a). Subdivision (b) of that rule is covered by § 1143 of the Code.

Rule 3022. Final Decree

After an estate is fully administered, including distribution of any deposit required by the plan, the court shall enter a final decree (1) discharging any trustee if not previously discharged and cancelling his bond; (2) making provision by way of injunction or otherwise as may be equitable; and (3) closing the case.

ADVISORY COMMITTEE NOTE

Section 350 of the Code requires the court to close the case after the estate is fully administered and the trustee has been discharged. Section 1143 places a five year limitation on the surrender of securities when required for participation under a plan but this provision should not delay entry of the final decree.

PART IV

THE DEBTOR: DUTIES AND BENEFITS

Rule 4001. Relief from Automatic Stay; Use of Cash Collateral

(a) REQUEST FOR RELIEF FROM STAY OR TO USE CASH COLLATERAL. A request for relief from an automatic stay provided by the Code or for the use of cash collateral pursuant to § 363(c)(2) shall be made in accordance with Rule 9014.

(b) FINAL HEARING ON STAY. The stay of any act against property of the estate under § 362(a) of the Code expires 30 days after a final hearing is commenced pursuant to § 362(e)(2) unless within that time the court denies the motion for relief from the stay.

(c) EX PARTE RELIEF FROM STAY. Relief from a stay under § 362(a) may be granted without prior notice to the adverse party only if (1) it clearly appears from specific facts shown by affidavit or by a verified motion that immediate and irreparable injury, loss, or damage will result to the movant before the adverse party or his attorney can be heard in opposition, and (2) the movant's attorney certifies to the court in writing the efforts, if any, which have been made to give notice and the reasons why notice should not be

required. The party obtaining relief under this subdivision and § 362(f) shall immediately give oral notice thereof to the trustee or debtor in possession and to the debtor and forthwith mail or otherwise transmit to such person or persons a copy of the order granting relief. On two days notice to the party who obtained relief from the stay without notice or on shorter notice to that party as the court may prescribe, the adverse party may appear and move reinstatement of the stay. In that event, the court shall proceed expeditiously to hear and determine the motion.

ADVISORY COMMITTEE NOTE

This rule implements § 362 of the Code which sets forth provisions regarding the automatic stay that arises on the filing of a petition. That section and this rule are applicable in chapter 7, 9, 11 and 13 cases. It also implements § 363(c)(2) concerning use of cash collateral.

Subdivision (a) transforms with respect to the automatic stay what was an adversary proceeding under the former rules to motion practice. The Code provides automatic stays in several sections, e.g., §§ 362(a), 1301(a), and in § 362(d) provides some grounds for relief from the stay. This rule specifies that the pleading seeking relief is by means of a motion. Thus the time period in Rule 7012 to answer a complaint would not be applicable and shorter periods may be fixed. Section 362(e) requires the preliminary hearing to be concluded within 30 days of its inception, rendering ordinary complaint and answer practice inappropriate.

This subdivision also makes clear that a motion under Rule 9014 is the proper procedure for a debtor to seek court permission to use cash collateral. See § 363(c)(2). Pursuant to Rule 5005, the motion should be filed in the court in which the case is pending. The court or local rule may specify the persons to be served with the motion for relief from the stay; see Rule 9013.

Subdivision (b) of the rule fills a procedural void left by § 362. Pursuant to § 362(e), the automatic stay is terminated 30 days after a motion for relief is made unless the court continues the stay as a result of a final hearing or, pending final hearing, after a preliminary hearing. If a preliminary hearing is held, § 362(e) requires the final hearing to be commenced within 30 days after the preliminary hearing. Although the expressed legislative intent is to require expeditious resolution of a secured party's motion for relief, § 362 is silent as to the time within which the final hearing must be concluded. Subdivision (b) imposes a 30 day deadline on the court to resolve the dispute.

At the final hearing, the stay is to be terminated, modified, annulled, or conditioned for cause, which includes, inter alia, lack of adequate protection; § 362(d). The burden of proving adequate protection is on the party opposing relief from the stay; § 362(g)(2). Adequate protection is exemplified in § 361.

Subdivision (c) implements § 362(f) which permits ex parte relief from the stay when there will be irreparable damage. This subdivision sets forth the procedure to be followed when relief is sought under § 362(f). It is derived from former Bankruptcy Rule 601(d).

Rule 4002. Duties of Debtor

In addition to performing other duties prescribed by the Code and rules, the debtor shall (1) attend and submit to an examination at the times ordered by the court; (2) attend the hearing on a complaint objecting to discharge and testify, if called as a witness; (3) inform the trustee immediately in writing as to the location of real property in which the debtor has an interest and the name and address of every person holding money or property subject to the debtor's withdrawal or order if a schedule of property has not yet been filed pursuant to Rule 1007; and (4) cooperate with the trustee in

the preparation of an inventory, the examination of proofs of claim, and the administration of the estate.

ADVISORY COMMITTEE NOTE

This rule should be read together with §§ 343 and 521 of the Code and Rule 1007, all of which impose duties on the debtor. Clause (3) of this rule implements the provisions of Rule 2015(a).

Rule 4003. Exemptions

(a) CLAIM OF EXEMPTIONS. A debtor shall list the property claimed as exempt under § 522 of the Code on the schedule of assets required to be filed by Rule 1007. If the debtor fails to claim exemptions or file the schedule within the time specified in Rule 1007, a dependent of the debtor may file the list within 30 days thereafter.

(b) OBJECTIONS TO CLAIM OF EXEMPTIONS. The trustee or any creditor may file objections to the list of property claimed as exempt within 30 days after the conclusion of the meeting of creditors held pursuant to Rule 2003(a) or the filing of any amendment to the list unless, within such period, further time is granted by the court. Copies of the objections shall be delivered or mailed to the trustee and to the person filing the list and his attorney.

(c) BURDEN OF PROOF. In any hearing under this rule, the objecting party has the burden of proving that the

exemptions are not properly claimed. After hearing on notice, the court shall determine the issues presented by the objections.

(d) AVOIDANCE BY DEBTOR OF TRANSFERS OF EXEMPT PROPERTY. A proceeding by the debtor to avoid a lien or other transfer of property exempt under § 522(f) of the Code shall be by motion in accordance with Rule 9014.

ADVISORY COMMITTEE NOTE

This rule is derived from § 522(l) of the Code and, in part, former Bankruptcy Rule 403. The Code changes the thrust of that rule by making it the burden of the debtor to list his exemptions and the burden of parties in interest to raise objections in the absence of which "the property claimed as exempt on such list is exempt;" § 522(1).

Subdivision (a). While § 522(l) refers to a list of property claimed as exempt, the rule incorporates such a list as part of Official Form No. 6, the schedule of the debtor's assets, rather than requiring a separate list and filing. Rule 1007, to which subdivision (a) refers, requires that schedule to be filed within 15 days after the order for relief, unless the court extends the time.

Section 522(l) also provides that a dependent of the debtor may file the list if the debtor fails to do so. Subdivision (a) of the rule allows such filing from the expiration of the debtor's time until 30 days thereafter. Dependent is defined in § 522(a)(1).

Subdivision (d) provides that a proceeding by the debtor, permitted by § 522(f) of the Code, is a contested matter rather than the more formal adversary proceeding. Proceedings within the scope of this subdivison are distinguished from proceedings brought by the trustee to avoid transfers. The latter are classified as adversary proceedings by Rule 7001.

Rule 4004. Grant Or Denial of Discharge

(a) TIME FOR FILING COMPLAINT OBJECTING TO DISCHARGE; NOTICE OF TIME FIXED. In a chapter 7 liquidation case a complaint objecting to the debtor's discharge under § 727(a) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). In a chapter 11 reorganization case, such complaint shall be filed not later than the first date set for the hearing on confirmation. The court shall give not less than 25 days notice of the time so fixed to all creditors in the manner provided in Rule 2002, and to the trustee and his attorney.

(b) EXTENSION OF TIME. On motion of any party in interest, after hearing on notice, the court may for cause extend the time for filing a complaint objecting to discharge. The motion shall be made before such time has expired.

(c) GRANT OF DISCHARGE. In a chapter 7 case, on expiration of the time fixed for filing a complaint objecting to discharge, the court shall forthwith grant the discharge unless (1) the debtor is not an individual, (2) a complaint objecting to the discharge has been filed, or (3) the debtor has filed a waiver under § 727(a)(10) of the Code.

Notwithstanding the foregoing, on motion of the debtor, the court may defer the entry of an order granting a discharge for 30 days and, on motion within such period, the court may defer entry of the order to a date certain.

(d) APPLICABILITY OF RULES IN PART VII. A proceeding commenced by a complaint objecting to discharge is governed by the rules in Part VII.

(e) ORDER OF DISCHARGE. An order of discharge shall conform to Official Form No. 27.

(f) REGISTRATION IN OTHER DISTRICTS. An order of discharge that has become final may be registered in any other district by filing a certified copy of the order in the office of the clerk of the bankruptcy court of that district. When so registered the order of discharge shall have the same effect as an order of the court of the district where registered.

(g) NOTICE OF DISCHARGE. The clerk shall promptly mail a copy of the final order of discharge to the persons specified in subdivision (a) of this rule.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rule 404.

Subdivisions (a) and (b) of this rule prescribe the procedure for determining whether a discharge will be granted pursuant to § 727 of the Code. The time fixed by subdivision (a) may be enlarged as provided in subdivision (b).

The notice referred to in subdivision (a) is required to be given by mail and addressed to creditors as provided in Rule 2002.

An extension granted on a motion pursuant to subdivision (b) of the rule would ordinarily benefit only the movant, but its scope and effect would depend on the terms of the extension.

Subdivision (c). If a complaint objecting to discharge is filed, the court's grant or denial of the discharge will be entered at the conclusion of the proceeding as a judgment in accordance with Rule 9021. The inclusion of the clause in subdivision (c) qualifying the duty of the court to grant a discharge when a waiver has been filed is in accord with the construction of the Code. 4 Collier, Bankruptcy ¶ 727.12 (15th ed. 1979).

The last sentence of subdivision (c) takes cognizance of § 524(c) of the Code which authorizes a debtor to enter into enforceable reaffirmation agreements only prior to entry of the order of discharge. Immediate entry of that order after expiration of the time fixed for filing complaints objecting to discharge may render it more difficult for a debtor to settle pending litigation to determine the dischargeability of a debt and execute a reaffirmation agreement as part of a settlement.

Subdivision (d). An objection to discharge is required to be made by a complaint, which initiates an adversary proceeding as provided in Rule 7003. Pursuant to Rule 5005, the complaint should be filed in the court in which the case is pending.

Subdivision (e). Official Form No. 27 to which subdivision (e) refers, includes notice of the effects of a discharge specified in § 524(a) of the Code.

Subdivision (f). Registration may facilitate the enforcement of the order of discharge in a district other than that in which it was entered. See 2 Moore's Federal Practice ¶ 1.04[2] (2d ed. 1967). Because of the nationwide service of process authorized by Rule 7004, however, registration of the order of discharge is not necessary under these rules to enable a discharged debtor to obtain relief against a creditor proceeding anywhere in the United States in disregard of the injunctive provisions of the order of discharge.

Subdivision (g). Notice of discharge should be mailed promptly after the order becomes final so that creditors may be informed of entry of the order and of its injunctive provisions. Rule 2002 specifies the manner of the notice and persons to whom the notice is to be given.

Rule 4005. Burden of Proof in Objecting to Discharge

At the trial on a complaint objecting to a discharge, the plaintiff has the burden of proving his objection.

ADVISORY COMMITTEE NOTE

This rule does not address the burden of going forward with the evidence. Subject to the allocation by the rule of the initial burden of producing evidence and the ultimate burden of persuasion, the rule leaves to the courts the formulation of rules governing the shift of the burden of going forward with the evidence in the light of considerations such as the difficulty of proving the nonexistence of a fact and of establishing a fact as to which the evidence is likely to be more accessible to the debtor than to the objector. See, e.g., In re Haggerty, 165 F.2d 977, 979-80 (2d Cir. 1948); Federal Provision Co. v. Ershowsky, 94 F.2d 574, 575, (2d Cir. 1938); In re Riceputo, 41 F. Supp. 926, 927-28 (E.D.N.Y. 1941).

Rule 4006. Notice of No Discharge

If an order is entered denying or revoking a discharge or if a waiver of discharge is filed, after the order becomes final or the waiver is filed the clerk shall promptly give notice thereof to all creditors in the manner provided in Rule 2002.

ADVISORY COMMITTEE NOTE

The suspension by § 108(c) of the Code of the statute of limitations affecting any debt of a debtor terminates within 30 days after the debtor is denied a discharge or otherwise loses his right to a discharge. If, however, a debtor's failure to receive a discharge does not come to the attention of his creditors until after the statutes of limitations have run, the debtor obtains substantially the same benefits from his bankruptcy as a debtor who is discharged.

This rule requires the clerk to notify creditors if a debtor fails to obtain a discharge because a waiver of discharge was filed under § 727(a)(10) or as a result of an order denying or revoking the discharge under § 727(a) or (d).

Rule 4007. Determination of Dischargeability of a Debt

(a) PERSONS ENTITLED TO FILE COMPLAINT. A debtor or any creditor may file a complaint with the court to obtain a determination of the dischargeability of any debt.

(b) TIME FOR COMMENCING PROCEEDING OTHER THAN UNDER § 523(c) OF THE CODE. A complaint other than under § 523(c) may be filed at any time. A case may be reopened without payment of an additional filing fee for the purpose of filing a complaint to obtain a determination under this rule.

(c) TIME FOR FILING COMPLAINT UNDER § 523(c) IN CHAPTER 7 LIQUIDATION AND CHAPTER 11 REORGANIZATION CASES; NOTICE OF TIME FIXED. A complaint to determine the dischargeability of any debt pursuant to § 523(c) of the Code shall be filed not later than 60 days following the first date set for the meeting of creditors held pursuant to § 341(a). The court shall give all creditors not less than 30 days notice of the time so fixed in the manner provided in Rule 2002. On motion of any party in interest, after hearing on notice, the court may for cause

extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(d) TIME FOR FILING COMPLAINT UNDER § 523(c) IN CHAPTER 13 INDIVIDUAL'S DEBT ADJUSTMENT CASES; NOTICE OF TIME FIXED. On motion by a debtor for a discharge under § 1328(b), the court shall enter an order fixing a time for the filing of a complaint to determine the dischargeability of any debt pursuant to § 523(c) and shall give not less than 30 days notice of the time fixed to all creditors in the manner provided in Rule 2002. On motion of any party in interest after hearing on notice the court may for cause extend the time fixed under this subdivision. The motion shall be made before the time has expired.

(e) APPLICABILITY OF RULES IN PART VII. A proceeding commenced by a complaint filed under this rule is governed by the rules in Part VII.

ADVISORY COMMITTEE NOTE

This rule prescribes the procedure to be followed when a party requests the court to determine dischargeability of a debt pursuant to § 523 of the Code.

Although a complaint that comes within § 523(c) must ordinarily be filed before determining whether the debtor will be discharged, the court need not determine the issues presented by the complaint filed under this rule until the question of discharge has been determined under Rule 4004. A complaint filed under this rule initiates an adversary proceeding as provided in Rule 7003.

Subdivision (b) does not contain a time limit for filing a complaint to determine the dischargeability of a type of debt listed as nondischargeable under § 523(a)(1), (3), (5), (7), (8), or (9). Jurisdiction over this issue on these debts is held concurrently by the bankruptcy court and any appropriate nonbankruptcy forum.

Subdivision (c) differs from subdivision (b) by imposing a deadline for filing complaints to determine the issue of dischargeability of debts set out in § 523(a)(2), (4) or (6) of the Code. The bankruptcy court has exclusive jurisdiction to determine dischargeability of these debts. If a complaint is not timely filed, the debt is discharged. See § 523(c).

Subdivision (e). The complaint required by this subdivision should be filed in the court in which the case is pending pursuant to Rule 5005.

Rule 4008. Discharge and Reaffirmation Hearing

Not more than 30 days following the entry of an order granting or denying a discharge, or confirming a plan in a chapter 11 reorganization case concerning an individual debtor and on not less than 10 days notice to the debtor and the trustee, the court shall hold a hearing as provided in § 524(d) of the Code. A motion by the debtor for approval of a reaffirmation agreement shall be filed before or at the hearing.

ADVISORY COMMITTEE NOTE

Section 524(d) of the Code requires the court to hold a hearing to inform an individual debtor concerning the granting or denial of discharge and the law applicable to reaffirmation agreements.

The notice of the § 524(d) hearing may be combined with the notice of the meeting of creditors or entered as a separate order.

The expression "not more than" contained in the first sentence of the rule is for the explicit purpose of requiring the hearing to occur within that time period and cannot be extended.

PART V
BANKRUPTCY COURTS AND CLERKS

Rule 5001. Bankruptcy Courts and Clerks' Offices

(a) BANKRUPTCY COURTS ALWAYS OPEN. Bankruptcy courts shall be deemed always open for the purpose of filing any pleading or other proper paper, issuing and returning process, and filing, making, or entering motions, orders and rules.

(b) TRIALS AND HEARINGS; ORDERS IN CHAMBERS. All trials and hearings shall be conducted in open court and so far as convenient in a regular court room. All other acts or proceedings may be done or conducted by a bankruptcy judge in chambers and at any place either within or without the district; but no hearing, other than one ex parte, shall be conducted outside the district without the consent of all parties affected thereby.

(c) CLERK'S OFFICE. The clerk's office with the clerk or a deputy in attendance shall be open during business hours on all days except Saturdays, Sundays and the legal holidays listed in Rule 6(a) F. R. Civ. P. A local rule or order may provide that the clerk's office shall be open for specified hours on Saturdays or particular legal holidays other than those listed in Rule 77 (c) F. R. Civ. P.

ADVISORY COMMITTEE NOTE

This rule is adapted from subdivisions (a), (b) and (c) of Rule 77 F. R. Civ. P.

Rule 5002. Prohibited Appointments

No person may be appointed as a trustee or examiner or be employed as an attorney, accountant, appraiser, auctioneer, or other professional person pursuant to § 327 or § 1103 of the Code if (1) the person is a relative of any judge of the court making the appointment or approving the employment or (2) the person is or has been so connected with any judge of the court making the appointment or approving the employment as to render such appointment or employment improper. Whenever under this rule a person is ineligible for appointment or employment, the person's firm, partnership, corporation, or any other form of business association or relationship, and all members, associates and professional employees thereof are also ineligible for appointment or employment.

ADVISORY COMMITTEE NOTE

This rule is adapted from former Bankruptcy Rule 505(a). The scope of the prohibition on appointment or employment is expanded to include an examiner appointed under § 1104 of the Code and attorneys and other professional persons whose employment must be approved by the court under § 327 or § 1103.

The rule supplements two statutory provisions. Under 18 U.S.C. § 1910, it is a criminal offense for a judge to appoint a relative as a trustee and, under 28 U.S.C. § 458, a person may not be "appointed to or employed in any office or duty in any court" if he is a relative of any judge of that court. The rule prohibits the appointment or employment of a relative of a bankruptcy judge in a case pending before that bankruptcy judge or before other bankruptcy judges sitting within the district.

A relative is defined in § 101(34) of the Code to be an "individual related by affinity or consanguinity within the third degree as determined by the common law, or individual in a step or adoptive relationship within such third degree." Persons within the third degree under the common law system are as follows: first degree — parents, brothers and sisters, and children; second degree — grandparents, uncles and aunts, first cousins, nephews and nieces, and grandchildren; third degree — great grandparents, great uncles and aunts, first cousins once removed, second cousins, grand nephews and nieces, great grandchildren. Rule 9001 incorporates the definitions of § 101 of the Code.

In order for the policy of this rule to be meaningfully implemented, it is necessary to extend the prohibition against appointment or employment to the firm or other business association of the ineligible person and to those affiliated with the firm or business association. "Firm" is defined in Rule 9001 to include a professional partnership or corporation of attorneys or accountants. All other types of business and professional associations and relationships are covered by this rule.

Rule 5003. Records Kept By the Clerk

(a) BANKRUPTCY DOCKETS. The clerk shall keep bankruptcy dockets recording all judgments and orders and the activity in each case as prescribed by the Director of the Administrative Office of the United States Courts. The entry of a judgment or order in a docket shall show the date the entry is made.

(b) CLAIMS REGISTER. The clerk shall keep in a claims register a list of claims filed in a case when it appears that there will be a distribution to unsecured creditors.

(c) JUDGMENTS. The clerk shall keep, in the form and manner as the Director of the Administrative Office of the United States Courts may prescribe, a correct copy of every final judgment or order affecting title to or lien on real property or for the recovery of money or property, and any other order which the court may direct to be kept.

(d) INDEX OF CASES; CERTIFICATE OF SEARCH. The clerk shall keep suitable indices of all cases filed under the Code as prescribed by the Director of the Administrative Office of the United States Courts. On request, the clerk shall make a search of any index and papers in his custody and certify whether a case has been filed in or transferred to the court or a discharge entered in its records.

(e) OTHER BOOKS AND RECORDS OF THE CLERK. The clerk shall also keep such other books and records as may be required by the Director of the Administrative Office of the United States Courts.

ADVISORY COMMITTEE NOTE

This rule consolidates former Bankruptcy Rules 504 and 507. The record-keeping duties of the referee under former Bankruptcy Rule 504 are transferred to the clerk. Subdivisions (a), (c), (d) and (e) are similar to subdivisions (a)-(d) of Rule 79 F. R. Civ. P.

Subdivision (b) requires that filed claims be listed on a claims register only when there may be a distribution to unsecured creditors. Compilation of the list for no asset or nominal asset cases would serve no purpose.

Rule 2013 requires the clerk to maintain a public record of fees paid from the estate and an annual summary thereof.

Former Bankruptcy Rules 507(d) and 508, which made materials in the clerk's office and files available to the public, are not necessary because § 107 of the Code guarantees public access to files and dockets of cases under the Code.

Rule 5004. Disqualification

(a) DISQUALIFICATION OF JUDGE. When a judge is disqualified from acting by 28 U.S.C. § 455, he shall disqualify himself from presiding over the adversary proceeding or contested matter in which the disqualifying circumstance arises or, if appropriate, he shall disqualify himself from presiding over the case.

(b) DISQUALIFICATION OF JUDGE FROM ALLOWING COMPENSATION. A judge shall disqualify himself from allowing compensation to a person who is a relative or with whom he is so associated as to render it improper for him to authorize such compensation.

ADVISORY COMMITTEE NOTE

Subdivision (a). Disqualification of a bankruptcy judge is governed by 28 U.S.C. § 455. That section provides that the judge "shall disqualify himself in any proceeding in which his impartiality might reasonably be questioned" or under certain other circumstances. In a case under the Code it is possible that the

disqualifying circumstance will be isolated to an adversary proceeding or contested matter. The rule makes it clear that when the disqualifying circumstance is limited in that way the judge need only disqualify himself from presiding over that adversary proceeding or contested matter.

It is possible, however, that even if the disqualifying circumstance arises in connection with an adversary proceeding, the effect will be so pervasive that disqualification from presiding over the case is appropriate. This distinction is consistent with the definition of "proceeding" in 28 U.S.C. § 455(d)(1).

Subdivision (b) precludes a bankruptcy judge from allowing compensation from the estate to a relative or other person closely associated with the judge. The subdivision applies where the judge has not appointed or approved the employment of the person requesting compensation. Perhaps the most frequent application of the subdivision will be in the allowance of administrative expenses under § 503(b)(3)-(5) of the Code. For example, if an attorney or accountant is retained by an indenture trustee who thereafter makes a substantial contribution in a chapter 11 case, the attorney or accountant may seek compensation under § 503(b)(4). If the attorney or accountant is a relative of or associated with the bankruptcy judge, the judge may not allow compensation to the attorney or accountant. Section 101(34) defines relative and Rule 9001 incorporates the definitions of the Code. See the Advisory Committee's Note to Rule 5002.

Rule 5005. Filing of Papers

(a) FILING. The petition, proofs of claim or interest, complaints, motions, applications, objections and other papers required to be filed by these rules, except as provided in 28 U.S.C. § 1473, shall be filed with the clerk of the court in which the case under the Code is pending. The judge of that court may permit the papers to be filed with him, in which event he shall note thereon the filing date and forthwith transmit them to the clerk.

(b) ERROR IN FILING. A paper intended to be filed but erroneously delivered to the trustee, the attorney for the trustee, a bankruptcy judge, a district judge, or the clerk of the district court shall, after the date of its receipt has been noted thereon, be transmitted forthwith to the clerk of the bankruptcy court. In the interest of justice, the court may order that the paper shall be deemed filed as of the date of its original delivery.

ADVISORY COMMITTEE NOTE

Subdivision (a) is an adaptation of Rule 5(e) F. R. Civ. P. Sections 301-304 of the Code and Rules 1002 and 1003 require that cases under the Code be commenced by filing a petition "with the bankruptcy court." Other sections of the Code and other rules refer to or contemplate filing but there is no specific reference to filing with the bankrutcy court. For example, § 501 of the Code requires filing of proofs of claim and Rule 3016(c) requires the filing of a disclosure statement. This subdivision applies to all situations in which filing is required. Except when filing in another district is authorized by 28 U.S.C. § 1473, all papers, including complaints commencing adversary proceedings, must be filed in the court where the case under the Code is pending.

Subdivision (b) is the same as former Bankruptcy Rule 509(c).

Rule 5006. Certification of Copies of Papers

The clerk shall issue a certified copy of the record of any proceeding in a case under the Code or of any paper filed with the court on payment of any prescribed fee.

ADVISORY COMMITTEE NOTE

Fees for certification and copying are fixed by the Judicial Conference under 28 U.S.C. § 1930(b).

Rule 1101 F. R. Evid. makes the Federal Rules of Evidence applicable to cases under the Code. Rule 1005 F. R. Evid. allows the contents of an official record or of a paper filed with the court to be proved by a duly certified copy. A copy certified and issued in accordance with Rule 5006 is accorded authenticity by Rule 902(4) F. R. Evid.

Rule 5007. Record of Proceedings and Transcripts

(a) FILING OF RECORD OR TRANSCRIPT. The reporter or operator of a recording device shall certify the original notes of testimony, tape recording, or other original record of the proceeding and promptly file them with the clerk. The person preparing any transcript shall promptly file a certified copy with the clerk.

(b) TRANSCRIPT FEES. The fees for copies of transcripts shall be charged at rates prescribed by the Judicial Conference of the United States. No fee may be charged for the certified copy filed with the clerk for the records of the court.

(c) ADMISSIBILITY OF RECORD IN EVIDENCE. A certified sound recording or a transcript of a proceeding shall be admissible as prima facie evidence to establish the record.

ADVISORY COMMITTEE NOTE

This rule supplements 28 U.S.C. § 773. A record of proceedings before the bankruptcy judge is to be made whenever practicable. By whatever means the record is made, subdivision (a) requires that the preparer of the record certify and file the original notes, tape recording, or other form of sound recording of the proceedings. Similarly, if a transcript is requested, the preparer is to file a certified copy with the clerk.

Subdivision (b) is derived from 28 U.S.C. § 753(f).

Subdivision (c) is derived from former Bankruptcy Rule 511(c). This subdivision extends to a sound recording the same evidentiary status as a transcript under 28 U.S.C. § 773(b).

Rule 5008. Funds of the Estate

(a) COURT APPROVAL REQUIRED. A deposit or investment for which a bond or deposit of securities is required under § 345(b) of the Code shall not be made until the court, on motion with such notice as the court directs, approves the bond or the deposit of securities.

(b) REPORT OF DEPOSIT OR INVESTMENT. Promptly after making the initial deposit or investment of the estate's funds and thereafter as the court may direct, the trustee shall file a report which identifies the depository or describes the investment and states the amount of any deposit or investment and whether any portion is insured or guaranteed by the United States or a department, agency, or instrumentality of the United States, or backed by the full faith and credit of the United States.

(c) DEPOSIT OF SECURITIES; AGREEMENT. Securities accepted for deposit in lieu of a surety on a depository bond shall be deposited in the custody of the Federal Reserve Bank or branch thereof designated by the court or in the custody of such other person as the court may direct. The securities shall be deposited conditioned on proper accounting for all money deposited or invested and for any return on any such money, prompt repayment of such money and return thereon, and faithful performance of the duties as a depository or entity with whom an investment is made. The entity depositing securities shall execute an agreement for the deposit of securities in favor of the United States which incorporates the foregoing conditions. Securities subject to such an agreement shall be subject to the order of the court.

(d) ACTION ON BOND OR AGREEMENT FOR DEPOSIT OF SECURITIES. Proceedings on a bond given pursuant to § 345(b) of the Code or on an agreement for deposit of securities required by subdivision (c) of this rule shall be in the name of the United States for the use of the estate or any person injured by a breac' of the condition.

(e) PROHIBITION OF DEPOSITS WHEN ADEQUACY OF SECURITY DOUBTFUL. No trustee or other person shall

deposit or invest funds received or held by him as a fiduciary under the Code if there is reasonable cause to believe that the bond or the security therefor or the deposited securities are or may be inadequate in view of existing and expected deposits or investments.

(f) REPORTS REQUIRED. Depositories and entitites with whom deposits or investments are made shall file reports as prescribed by regulations of the Director of the Administrative Office of the United States Courts.

(g) DEFICIENCY IN AMOUNT OF BOND OR DEPOSITED SECURITIES. Whenever the bond and any deposited securities do not or will not constitute adequate security because of existing and expected deposits or investments, the court shall require the depository or entity with whom an investment is made to increase the amount of the bond or the deposited securities within a fixed time. If within the time fixed the depository or entity with whom an investment is made fails to increase the amount of the bond or the deposited securities to an amount adequate for existing and expected deposits or investments, the court shall order immediate payment of all money on deposit or invested with it, with all interest payable thereon.

(h) RELIEF FROM LIABILITY ON BOND. A surety on a bond may move to be relieved from liability with respect to any subsequent default. If after hearing on notice to the depository or entity with whom the investment is made, to other sureties, to trustees and to other representatives of estates having money of the estate protected by the bond, the court determines that the motion may be granted without injury to any party in interest, the surety shall be relieved after a new bond or other appropriate security is submitted and approved.

(i) COMBINING OF FUNDS FOR DEPOSIT. The court may authorize the deposit or investment of funds from more than one estate in a single account or investment instrument. The trustee shall maintain records identifying separately the money of each estate. The court shall require that a statement of account be filed at least quarterly.

ADVISORY COMMITTEE NOTE

Subdivision (a). Section 345 of the Code permits the trustee to deposit or invest money of the estate without prior approval of the court. The trustee may select any kind of financial institution as a depository and any form of investment instrument. Except when the deposit or investment is backed by the United States, the depository must either post a bond or deposit securities. Section 345(b)(1)(B) requires court approval of the bond. Subdivision (a) requires that the court's approval of the bond be obtained before funds of the estate are deposited or invested. The same requirement of prior court approval is also made applicable to the deposit of securities.

Subdivision (b) requires that the initial deposit or investment of the estate's funds be reported to the court. A local rule or order may require the filing of additional reports concerning the management of the estate's funds. If the deposit or investment is not backed by the United States, the report should identify the order of the court approving the bond or the deposit of securities. The court may direct that the report of initial deposits or investments or other reports be provided to creditors or other parties in interest.

Subdivision (c) is an adaptation of former Bankruptcy Rule 512(b). This subdivision makes the conditions of the bond specified in § 345(b)(1) of the Code applicable to a deposit of securities under § 345(b)(2) and also requires the execution of an agreement for deposit of securities which incorporates these conditions. The first sentence of the subdivision goes beyond the comparable provision in former Bankruptcy Rule 512(b) by specifically authorizing the court to permit the securities to be held by an entity other than the Federal Reserve Bank.

Subdivision (d)-(h) are derived from former Bankruptcy Rule 512.

Subdivision (i) authorizes the court to permit a trustee to combine money of more than one estate for the purposes of deposit or investment. Combined deposits or investments may be particularly beneficial when a standing chapter 13 trustee has a large number of plans to administer. The subdivision requires that at least quarterly statements of account be filed, but leaves to the court the form of the account and whether more frequent reports should be filed.

Rule 5009. Closing Cases

When an estate has been fully administered and the court has discharged the trustee, the case shall be closed.

ADVISORY COMMITTEE NOTE

This rule is the same as § 350(a) of the Code. An estate may be closed even though the period allowed by Rule 3002(c) for filing claims has not expired. The closing of a case may be expedited when a notice of no dividends is given under Rule 2002(e). Dismissal of a case for want of prosecution or failure to pay filing fees is governed by Rule 1017.

Rule 5010. Reopening Cases

A case may be reopened on motion of the debtor or other party in interest pursuant to § 350(b) of the Code.

ADVISORY COMMITTEE NOTE

Section 350(b) of the Code provides: "A case may be reopened in the court in which such case was closed to administer assets, to accord relief to the debtor, or for other cause."

Rule 9024, which incorporates Rule 60 F. R. Civ. P., exempts motions to reopen cases under the Code from the one year limitation of Rule 60(b).

Although a case has been closed the court may sometimes act without reopening the case. Under Rule 9024, clerical errors in judgments, orders, or other parts of the record or errors therein caused by oversight or omission may be corrected. A judgment determined to be non-dischargeable pursuant to Rule 4007 may be enforced after a case is closed by a writ of execution obtained pursuant to Rule 7069.

PART VI

COLLECTION AND LIQUIDATION OF THE ESTATE

Rule 6001. Burden of Proof As to Validity of Postpetition Transfer

Any entity asserting the validity of a transfer under § 549 of the Code shall have the burden of proof.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 603. The Act contained, in § 70d, a provision placing the burden of proof on the same person as did Rule 603. The Code does not contain any directive with respect to the burden of proof. This omission, in all probability, resulted from the intention to leave matters affecting evidence to these rules. See H. Rep. No. 95-595, 95th Cong. 1st Sess. (1977) 293.

Rule 6002. Accounting by Prior Custodian of Property of the Estate

(a) ACCOUNTING REQUIRED. Any custodian required by the Code to deliver property in his possession or control to the trustee, shall promptly file a report and account with the bankruptcy court with respect to the property of the estate and his administration thereof.

(b) EXAMINATION OF ADMINISTRATION. On the filing of the report and account required by subdivision (a) of this rule and after an examination has been made into the superseded administration, after hearing on notice the court

shall determine the propriety of the administration, including the reasonableness of all disbursements.

ADVISORY COMMITTEE NOTE

"Custodian" is defined in § 101(10) of the Code. The definition includes a trustee or receiver appointed in proceedings not under the Code, as well as an assignee for the benefit of creditors.

This rule prescribes the procedure to be followed by a custodian who under § 543 of the Code is required to deliver property to the trustee and to account for its disposition. The examination under subdivision (b) may be initiated (1) on the motion of the custodian required to account under subdivision (a) for an approval of his account and discharge thereon, (2) on the motion of, or the filing of an objection to the custodian's account by, the trustee or any other party in interest, or (3) on the court's own initiative. Rule 9014 applies to any contested matter arising under this rule.

Section 543(d) is similar to an abstention provision. It grants the bankruptcy court discretion to permit the custodian to remain in possession and control of the property. In that event, the custodian is excused from complying with § 543(a)-(c) and thus would not be required to turn over the property to the trustee. When there is no duty to turn over to the trustee, Rule 6002 would not be applicable.

Rule 6003. Disbursement of Money of the Estate

Disbursement of estate funds shall be by check unless another method is approved by the court. On motion of a party in interest, the court may require countersignatures except that signature by the judge shall not be permitted.

ADVISORY COMMITTEE NOTE

This rule authorizes the trustee to disburse money of the estate not only by check but by any other method approved by the

court. In this latter regard, it continues the flexibility introduced by former Bankruptcy Rule 605(c) to recognize that mechanisms for payments through bank accounts are subject to technological and other changes. Local rule or a court order in a particular case may prescribe record-keeping requirements. The second sentence implements the policy of removing judges from nonjudicial functions.

Rule 6004. Use, Sale, or Lease of Property

(a) NOTICE OF PROPOSED USE, SALE, OR LEASE OF PROPERTY. Notice of a proposed use, sale, or lease of property other than in the ordinary course of business shall be given pursuant to Rule 2002(a)(2), (c), and (i).

(b) OBJECTION TO PROPOSAL. Except as provided in subdivision (c) of this rule, an objection to a proposed use, sale, or lease of property shall be filed and served not less than five days before the date set for the proposed action or within the time fixed by the court.

(c) SALE OF PROPERTY UNDER $2,500. Notwithstanding subdivision (a) of this rule, when all of the nonexempt property of the estate has an aggregate gross value less than $2,500, it shall be sufficient to give a general notice of intent to sell such property other than in the ordinary course of business to all creditors, indenture trustees, committees appointed or elected pursuant to the Code and other persons as the court may direct. An objection

to any such sale may be filed and served by a party in interest within 15 days of the mailing of the notice, or within the time fixed by the court.

(d) HEARING. If a timely objection is made pursuant to subdivision (b) or (c) of the rule, the date of the hearing thereon may be set in the notice given pursuant to subdivision (a) of this rule.

(e) CONDUCT OF SALE NOT IN THE ORDINARY COURSE OF BUSINESS.

(1) Public or Private Sale. All sales not in the ordinary course of business may be private or by public auction. Unless it is impracticable, an itemized statement of the property sold, the name of each purchaser, and the price received for each item or lot or for the property as a whole if sold in bulk shall be filed with the clerk on completion of a sale. If the property is sold by an auctioneer, he shall file the statement and furnish a copy to the trustee, debtor in possession, or chapter 13 debtor. If the property is not sold by an auctioneer, the trustee, debtor in possession, or chapter 13 debtor shall file the statement.

(2) Execution of Instruments. After a sale in accordance with this rule the debtor, the trustee, or debtor in possession, as the case may be, shall execute any instrument necessary or ordered by the court to effectuate the transfer to the purchaser.

ADVISORY COMMITTEE NOTE

Subdivisions (a) and (b). Pursuant to § 363(b) of the Code, a trustee or debtor in possession may use, sell, or lease property other than in the ordinary course of business only after notice and hearing. Rule 2002(a), (c) and (i) specifies the time when notice of sale is to be given, the contents of the notice and the persons to whom notice is to be given of sales of property. Subdivision (a) makes those provisions applicable as well to notices for proposed use and lease of property.

The Code does not provide the time within which parties may file objections to a proposed sale. Subdivision (b) of the rule requires the objection to be in writing and filed not less than five days before the proposed action is to take place. The objection should also be served within that time on the person who is proposing to take the action which would be either the trustee or debtor in possession. This time period is subject to change by the court. In some instances there is a need to conduct a sale in a short period of time and the court is given discretion to tailor the requirements to the circumstances.

Subdivision (c). In some situations a notice of sale for different pieces of property to all persons specified in Rule 2002(a) may be uneconomic and inefficient. This is particularly true in some chapter 7 liquidation cases when there is property of relatively little value which must be sold by the trustee. Subdivision (c) allows a general notice of intent to sell when the aggregate value of the estate's property is less than $2,500. The gross value is the value of the property without regard to the amount of any debt secured by a lien on the property. It is not necessary to give a detailed notice specifying the time and place of a particular sale. Thus, the requirements of Rule 2002(c) need not be met. If this method of providing notice of sales is used, the subdivision specifies that parties in interest may serve and file objections to the proposed sale

of any property within the class and the time for service and filing is fixed at not later than 15 days after mailing the notice. The court may fix a different time. Subdivision (c) would have little utility in chapter 11 cases. Pursuant to Rule 2002(i), the court can limit notices of sale to the creditors' committee appointed under § 1102 of the Code and the same burdens present in a small chapter 7 case would not exist.

Subdivision (d). If a timely objection is filed, a hearing is required with respect to the use, sale, or lease of property. Subdivision (d) renders the filing of an objection tantamount to requesting a hearing so as to require a hearing pursuant to §§ 363(b) and 102(1)(B)(i).

Subdivision (e) is derived in part from former Bankruptcy Rule 606(b) but does not carry forward the requirement of that rule that court approval be obtained for sales of property. Pursuant to § 363(b) court approval is not required unless timely objection is made to the proposed sale. The itemized statement or information required by the subdivision is not necessary when it would be impracticable to prepare it or set forth the information. For example, a liquidation sale of retail goods although not in the ordinary course of business may be on a daily ongoing basis and only summaries may be available.

The duty imposed by paragraph (2) does not affect the power of the bankruptcy court to order third persons to execute instruments transferring property purchased at a sale under this subdivision. See, e.g., In re Rosenberg, 138 F.2d 409 (7th Cir. 1943).

Rule 6005. Appraisers and Auctioneers

The order of the court approving the employment of an appraiser or auctioneer shall fix the amount or rate of his compensation. No officer or employee of the Judicial Branch of the United States or the United States Department of Justice shall be eligible to act as appraiser or auctioneer. No residence or licensing requirement shall disqualify an appraiser or auctioneer from employment.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 606(c) and implements § 327 of the Code. Pursuant to § 327, the trustee or debtor in possession may employ one or more appraisers or auctioneers, subject to court approval. This rule requires the court order approving such employment to fix the amount or rate of compensation. The second sentence of the former rule is retained to continue to safeguard against imputations of favoritism which detract from public confidence in bankruptcy administration. The final sentence is to guard against imposition of parochial requirements not warranted by any consideration having to do with sound bankruptcy administration.

Reference should also be made to Rule 2013(a) regarding the limitation on employment of appraisers and auctioneers, and Rule 2014(a) regarding the application for appointment of an appraiser or auctioneer.

Rule 6006. Assumption, Rejection and Assignment of Executory Contracts

(a) PROCEEDING TO ASSUME, REJECT, OR ASSIGN. A proceeding to assume, reject, or assign an executory contract, including an unexpired lease, other than as part of a plan is governed by Rule 9014.

(b) PROCEEDING TO REQUIRE TRUSTEE TO ACT. A proceeding by a party to an executory contract or unexpired lease in a chapter 9 municipality case, chapter 11 reorganization case, or chapter 13 individual's debt adjustment case, to require the trustee, debtor in possession, or debtor to determine whether to assume or reject the contract or lease is governed by Rule 9014.

(c) HEARING. When a motion is made pursuant to subdivision (a) or (b) of this rule, the court shall set a hearing on notice to the other party to the contract and to other parties in interest as the court may direct.

ADVISORY COMMITTEE NOTE

Section 365(a) of the Code requires court approval for the assumption or rejection of an executory contract by the trustee or debtor in possession. The trustee or debtor in possession may also assign an executory contract, § 365(f)(1), but must first assume the contract, § 365(f)(2). Rule 6006 provides a procedure for obtaining court approval. It does not apply to the automatic rejection of contracts which are not assumed in chapter 7 liquidation cases within 60 days after the order for relief, or to the assumption or rejection of contracts in a plan pursuant to § 1123(b)(2) or § 1322(b)(7).

Subdivision (a) by referring to Rule 9014 requires a motion to be brought for the assumption, rejection, or assignment of an executory contract. Normally, the motion will be brought by the trustee, debtor in possession or debtor in a chapter 9 or chapter 13 case. The authorization to assume a contract and to assign it may be sought in a single motion and determined by a single order.

Subdivision (b) makes applicable the same motion procedure when the other party to the contract seeks to require the chapter officer to take some action. Section 365(d)(2) recognizes that this procedure is available to these contractual parties. This provision of the Code and subdivision of the rule apply only in chapter 9, 11 and 13 cases. A motion is not necessary in chapter 7 cases because in those cases a contract is deemed rejected if the trustee does not timely assume it.

Subdivision (c) provides for the court to set a hearing on a motion made under subdivision (a) or (b). The other party to the contract should be given appropriate notice of the hearing and the court may order that other parties in interest, such as a creditors' committee, also be given notice.

Rule 6007. Abandonment or Disposition of Property

(a) NOTICE OF PROPOSED ABANDONMENT OR DISPOSITION; OBJECTIONS. Unless otherwise directed by the court, the trustee or debtor in possession shall give notice of a proposed abandonment or disposition of property to all creditors, indenture trustees and committees appointed or elected pursuant to the Code. An objection may be filed and served by a party in interest within 15 days of the mailing of the notice, or within the time fixed by the court.

(b) MOTION BY PARTY IN INTEREST. A party in interest may file and serve a motion requiring the trustee or debtor in possession to abandon property of the estate.

(c) HEARING. If a timely objection is made as prescribed by subdivision (a) of this rule, or if a motion is made as prescribed by subdivision (b), the court shall set a hearing on notice to the persons as the court may direct.

ADVISORY COMMITTEE NOTE

Sections 554 and 725 of the Code permit and require abandonment and disposition of property of the estate. Pursuant to § 554, the trustee may abandon property but only after notice and hearing. This section is applicable in chapter 7, 11 and 13 cases. Section 725 requires the trustee to dispose of property in which someone other than the estate has an interest, prior to final distribution. It applies only in chapter 7 cases. Notice and hearing are also required conditions. Section 102(1) provides that "notice and hearing" is construed to mean appropriate notice and an opportunity for a hearing. Neither § 554 nor § 725 specify to whom

the notices are to be sent. This rule does not apply to § 554(c). Pursuant to that subsection, property is deemed abandoned if it is not administered. A hearing is not required by the statute.

Subdivision (a) requires the notices to be sent to all creditors, indenture trustees, and committees elected under § 705 or appointed under § 1102 of the Code. This may appear burdensome, expensive and inefficient but the subdivision is in keeping with the Code's requirement for notice and the Code's intent to remove the bankruptcy judge from undisputed matters. The burden, expense and inefficiency can be alleviated in large measure by incorporating the notice into or together with the notice of the meeting of creditors so that separate notices would not be required.

Subdivision (b) implements § 554(b) which specifies that a party in interest may request an order that the trustee abandon property. The rule specifies that the request be by motion and, pursuant to the Code, lists the parties who should receive notice.

Subdivision (c) requires a hearing when an objection under subdivision (a) is filed or a motion under subdivision (b) is made. Filing of an objection is sufficient to require a hearing; a separate or joined request for a hearing is unnecessary since the objection itself is tantamount to such a request.

Rule 6008. Redemption of Property from Lien or Sale

On motion by the debtor, trustee, or debtor in possession and after hearing on notice as the court may direct, the court may authorize the redemption of property from a lien or from a sale to enforce a lien in accordance with applicable law.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 609. No provision in the Code addresses the trustee's right of redemption. Ordinarily the secured creditor should be given notice of the trustee's motion so that any objection may be raised to the proposed redemption.

The rule applies also to a debtor exercising a right of redemption pursuant to § 722. A proceeding under that section is governed by Rule 9014.

Rule 6009. Prosecution and Defense of Proceedings by Trustee or Debtor in Possession

With or without court approval, the trustee or debtor in possession may prosecute or may enter an appearance and defend any pending action or proceeding by or against the debtor, or commence and prosecute any action or proceeding in behalf of the estate before any tribunal.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 610.

Rule 6010. Proceeding to Avoid Indemnifying Lien or Transfer to Surety

If a lien voidable under § 547 of the Code has been dissolved by the furnishing of a bond or other obligation and the surety thereon has been indemnified by the transfer of, or the creation of a lien upon, nonexempt property of the debtor, the surety shall be joined as a defendant in any proceeding to avoid the indemnifying transfer or lien. Such proceeding is governed by the rules in Part VII. If an order is entered for the recovery of indemnifying property in kind or for the avoidance of an indemnifying lien, on motion by any

party in interest after notice and hearing the court shall ascertain the value of such property or lien. If the value is less than the amount for which the property or lien is indemnity, the surety may elect to retain the property or lien on payment of the value so ascertained to the trustee or debtor in possession, within the time fixed by the court.

ADVISORY COMMITTEE NOTE

This rule is derived from former Bankruptcy Rule 612.

PART VII

ADVERSARY PROCEEDINGS

Rule 7001. Scope of Rules of Part VII

An adversary proceeding is governed by the rules of this Part VII. It is a proceeding in a bankruptcy court (1) to recover money or property, except a proceeding under § 554(b) or § 725 of the Code, Rule 2017, or Rule 6002, (2) to determine the validity, priority, or extent of a lien or other interest in property, other than a proceeding under Rule 4003(d), (3) to obtain approval pursuant to § 363(h) for the sale of both the interest of the estate and of a co-owner in property, (4) to object to or revoke a discharge, (5) to revoke an order of confirmation of a chapter 11 or chapter 13 plan, (6) to determine the dischargeability of a debt, (7) to obtain an injunction or other equitable relief, (8) to subordinate any allowed claim or interest, except when subordination is provided in a chapter 9, 11, or 13 plan, (9) to obtain a declaratory judgment relating to any of the foregoing, or (10) to determine a claim or cause of action removed to a bankruptcy court.

ADVISORY COMMITTEE NOTE

The rules in Part VII govern the procedural aspects of litigation involving the matters referred to in this Rule 7001. Under Rule 9014 some of the Part VII rules also apply to contested matters.

These Part VII rules are based on the premise that to the extent possible practice before the bankruptcy courts and the district courts should be the same. These rules either incorporate or are adaptations of most of the Federal Rules of Civil Procedure. Although the Part VII rules of the former Bankruptcy Rules also relied heavily on the F. R. Civ. P., the former Part VII rules departed from the civil practice in two significant ways: a trial or pretrial conference had to be scheduled as soon as the adversary proceeding was filed and pleadings had to be filed within periods shorter than those established by the F. R. Civ. P. These departures from the civil practice have been eliminated.

The content and numbering of these Part VII rules correlates to the content and numbering of the F.R.Civ.P. Most, but not all, of the F.R.Civ.P. have a comparable Part VII rule. When there is no Part VII rule with a number corresponding to a particular F.R.Civ.P., Parts V and IX of these rules must be consulted to determine if one of the rules in those parts deals with the subject. The list below indicates the F.R.Civ.P., or subdivision thereof, covered by a rule in either Part V or Part IX.

F.R.Civ.P.	Rule in Part V or IX
6	9006
7(b)	9013
10(a)	9004(b)
11	9011
38,39	9015((a)-(e)
47-51	9015(f)
43,44,44.1	9017
45	9016
58	9021
59	9023
60	9024
61	9005
63	9028
77(a),(b),(c)	5001
77(d)	9022(d)
79(a)-(d)	5003
81(c)	9027
83	9029
92	9030

Proceedings to which the rules in Part VII apply directly include those brought to avoid transfers by the debtor under §§ 544, 545, 547, 548 and 549 of the Code; subject to important exceptions, proceedings to recover money or property; proceedings on bonds under Rules 5008(d) and 9025; proceedings under Rule 4004 to determine whether a discharge in a chapter 7 or 11 case should be denied because of an objection grounded on § 727 and proceedings in a chapter 7 or 13 case to revoke a discharge as provided in §§ 727(d) or 1328(e); and proceedings initiated pursuant to § 523(c) of the Code to determine the dischargeability of a particular debt. Those proceedings were classified as adversary proceedings under former Bankruptcy Rule 701.

Also included as adversary proceedings are proceedings to revoke an order of confirmation of a plan in a chapter 11 or 13 case as provided in §§ 1144 and 1330, to subordinate under § 510(c), other than as part of a plan, an allowed claim or interest, and to sell under § 363(h) both the interest of the estate and a co-owner in property.

Declaratory judgments with respect to the subject matter of the various adversary proceedings are also adversary proceedings.

Any claim or cause of action removed to a bankruptcy court pursuant to 28 U.S.C. § 1478 is also an adversary proceeding.

Unlike former Bankruptcy Rule 701, requests for relief from an automatic stay do not commence an adversary proceeding. Section 362(e) of the Code and Rule 4001 establish an expedited schedule for judicial disposition of requests for relief from the automatic stay. The formalities of the adversary proceeding process and the time for serving pleadings are not well suited to the expedited schedule. The motion practice prescribed in Rule 4001 is best suited to such requests because the court has the flexibility to fix hearing dates and other deadlines appropriate to the particular situation.

Clause (1) contains important exceptions. A person with an interest in property in the possession of the trustee or debtor in possession may seek to recover or reclaim that property under § 554(b) or § 725 of the Code. Since many attempts to recover or reclaim property under these two sections do not generate disputes, application of the formalities of the Part VII Rules is not appropriate. Also excluded from adversary proceedings is litigation arising from an examination under Rule 2017 of a debtor's payments of money or transfers of property to an attorney representing the debtor in a case under the Code or an examination of a superseded administration under Rule 6002.

Exemptions and objections thereto are governed by Rule 4003. Filing of proofs of claim and the allowances thereof are governed by Rules 3001-3005, and objections to claims are governed by Rule 3007. When an objection to a claim is joined with a demand for relief of the kind specified in this Rule 7001, the matter becomes an adversary proceeding. See Rule 3007.

Rule 7002. References to Federal Rules of Civil Procedure

Whenever a Federal Rule of Civil Procedure applicable to adversary proceedings makes reference to another Federal Rule of Civil Procedure, the reference shall be read as a reference to the Federal Rule of Civil Procedure as modified in this Part VII.

ADVISORY COMMITTEE NOTE

Rules 5, 12, 13, 14, 25, 27, 30, 41 and 52 F. R. Civ. P. are made applicable to adversary proceedings by Part VII. Each of those rules contains a cross reference to another Federal Rule; however, the Part VII rule which incorporates the cross-referenced Federal Rule modifies the Federal Rule in some way. Under this Rule 7002 the cross reference is to the Federal Rule as modified by Part VII. For example, Rule 5 F. R. Civ. P., which is made applicable to adversary proceedings by Rule 7005, contains a reference to Rule 4 F. R. Civ. P. Under this Rule 7002, the cross reference is to Rule 4 F. R. Civ. P. as modified by Rule 7004.

Rules 7, 10, 12, 13, 14, 19, 22, 23.2, 24-37, 41, 45, 49, 50, 52, 55, 59, 60, 62 F. R. Civ. P. are made applicable to adversary proceedings by Part VII or generally to cases under the Code by Part IX. Each of those Federal Rules contains a cross reference to another Federal Rule which is not modified by the Part VII or Part IX rule which makes the cross-referenced Federal Rule applicable. Since the cross-referenced rule is not modified by a Part VII rule this Rule 7002 does not apply.

Rule 7003. Commencement of Adversary Proceeding

Rule 3 F. R. Civ. P. applies in adversary proceedings.

ADVISORY COMMITTEE NOTE

Rule 5005(a) requires that a complaint commencing an adversary proceeding be filed with the court in which the case under the Code is pending unless 28 U.S.C. § 1473 authorizes the filing of the complaint in another district.

Rule 7004. Process; Service of Summons, Complaint

(a) SUMMONS; SERVICE; PROOF OF SERVICE. Rule 4(a), (b), (d), (e) and (g)-(i) F. R. Civ. P. applies in adversary proceedings. Personal service pursuant to Rule 4(d) F. R. Civ. P. may be made by any person not less than 18 years of age who is not a party and the summons may be delivered by the clerk to any such person.

(b) SERVICE BY FIRST CLASS MAIL. In addition to the methods of service authorized by Rule 4(d) F. R. Civ. P., service may be made within the United States by first class mail postage prepaid as follows:

(1) Upon an individual other than an infant or incompetent, by mailing a copy of the summons and complaint to his dwelling house or usual place of abode or to the place where he regularly conducts his business or profession.

(2) Upon an infant or an incompetent person, by mailing a copy of the summons and complaint to the person upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such defendant in the courts of general jurisdiction of that state. The summons and complaint in such case shall be addressed to the person required to be served at his dwelling house or usual place of abode or at the place where he regularly conducts his business or profession.

(3) Upon a domestic or foreign corporation or upon a partnership or other unincorporated association, by mailing a copy of the summons and complaint to the attention of an officer, a managing or general agent, or to any other agent authorized by appointment or by law to receive service of process and, if the agent is one authorized by statute to receive service and the statute so requires, by also mailing a copy to the defendant.

(4) Upon the United States, by mailing a copy of the summons and complaint to the United States attorney for the district in which the action is brought and also the Attorney General of the United States at Washington, District of Columbia, and in any action attacking the

validity of an order of an officer or an agency of the United States not made a party, by also mailing a copy of the summons and complaint to such officer or agency.

(5) Upon any officer or agency of the United States, by mailing a copy of the summons and complaint to the United States as prescribed in paragraph (4) of this subdivision and also to the officer or agency. If the agency is a corporation, the mailing shall be as prescribed in paragraph (3) of this subdivision of this rule.

(6) Upon a state or municipal corporation or other governmental organization thereof subject to suit, by mailing a copy of the summons and complaint to the person or office upon whom process is prescribed to be served by the law of the state in which service is made when an action is brought against such a defendant in the courts of general jurisdiction of that state, or in the absence of the designation of any such person or office by state law, then to the chief executive officer thereof.

(7) Upon a defendant of any class referred to in paragraph (1) or (3) of this subdivision of this rule, it is also sufficient if a copy of the summons and complaint is mailed to the person upon whom service is prescribed to be served by any statute of the United States or by the

law of the state in which service is made when an action is brought against such defendant in the court of general jurisidiction of that state.

(8) Upon any defendant, it is also sufficient if a copy of the summons and complaint is mailed to an agent of such defendant authorized by appointment or by law to receive service of process, at his dwelling house or usual place of abode or at the place where he regularly carries on his business or profession and, if the authorization so requires, by mailing also a copy of the summons and complaint to the defendant as provided in this subdivision.

(9) Upon the debtor, after a petition has been filed by or served upon the debtor and until the case is dismissed or closed, by mailing copies of the summons and complaint to the debtor at the address shown in the petition or statement of affairs or to such other address as the debtor may designate in writing filed with the court and, if the debtor is represented by an attorney, to the attorney at his post-office address.

(c) SERVICE BY PUBLICATION. If a party to an adversary proceeding to determine or protect rights in property in the custody of the court cannot be served as

provided in Rule 4(d) or (i) F. R. Civ. P. or subdivision (b) of this rule, the court may order the summons and complaint to be served by mailing copies thereof by first class mail postage prepaid, to the party's last known address and by at least one publication in such manner and form as the court may direct.

(d) NATIONWIDE SERVICE OF PROCESS. The summons and complaint and all other process except a subpoena may be served anywhere in the United States.

(e) SERVICE ON DEBTOR AND OTHERS IN FOREIGN COUNTRY. The summons and complaint and all other process except a subpoena may be served as provided in Rule 4(d)(1) and (d)(3) in a foreign country (A) on the debtor, any person required to perform the duties of a debtor, any general partner of a partnership debtor, or any attorney who is a party to a transaction subject to examination under Rule 2017; or (B) on any party to an adversary proceeding to determine or protect rights in property in the custody of the court; or (C) on any person whenever such service is authorized by a federal or state law referred to in Rule 4(d)7) or (e).

(f) SUMMONS: TIME LIMIT FOR SERVICE. If service is made pursuant to Rule 4(d)(1)-(7) it shall be made by delivery

of the summons and complaint within 10 days following issuance of the summons. If service is made by any authorized form of mail, the summons and complaint shall be deposited in the mail within 10 days following issuance of the summons. If a summons is not timely delivered or mailed, another summons shall be issued and served.

ADVISORY COMMITTEE NOTE

Subdivision (a) of the rule, by incorporation of Rule 4(a), (b), (d), (e) and (g)-(i) F. R. Civ. P., governs the mechanics of issuance of a summons and its form, the manner of service on parties and their representatives, and service in foreign countries.

Subdivision (b), which is the same as former Rule 704(c), authorizes service of process by first class mail postage prepaid. This rule retains the modes of service contained in former Bankruptcy Rule 704. The former practice, in effect since 1976, has proven satisfactory.

Subdivision (c) is derived from former Bankruptcy Rule 704(d)(2).

Subdivision (d). Nationwide service of process is authorized by subdivision (d).

Subdivision (e) authorizes service by delivery on individuals and corporations in foreign countries if the party to be served is the debtor or any person required to perform the duties of the debtor and certain other persons, the adversary proceeding involves property in the custody of the bankruptcy court, or if federal or state law authorizes such service in a foreign country.

Subdivision (f). The requirement of former Bankruptcy Rule 704 that the summons be served within 10 days is carried over into these rules by subdivision (f).

Rule 7005. Service and Filing of Pleadings and Other Papers

Rule 5 F. R. Civ. P. applies in adversary proceedings.

ADVISORY COMMITTEE NOTE

Rule 5 F. R. Civ. P. refers to Rule 4 F. R. Civ. P. Pursuant to Rule 7002 this reference is to Rule 4 F. R. Civ. P. as incorporated and modified by Rule 7004.

Rule 7007. Pleadings Allowed

Rule 7 F. R. Civ. P. applies in adversary proceedings.

Rule 7008. General Rules of Pleading

(a) APPLICABILITY OF RULE 8 F. R. CIV. P. Rule 8 F. R. Civ. P. applies in adversary proceedings. The allegation of jurisdiction required by Rule 8(a) shall also contain a reference to the name, number, and chapter of the case under the Code to which the adversary proceeding relates and to the district and division where the case under the Code is pending.

(b) ATTORNEY'S FEES. A request for an award of attorney's fees shall be pleaded as a claim in a complaint, cross-claim, third-party complaint, answer, or reply as may be appropriate.

Rule 7009. Pleading Special Matters

Rule 9 F. R. Civ. P. applies in adversary proceedings.

Rule 7010. Form of Pleadings

Rule 10 F. R. Civ. P. applies in adversary proceedings, except that the caption of each pleading in such a proceeding shall conform substantially to Official Form No. 34.

Rule 7012. Defenses and Objections — When and How Presented — By Pleading or Motion — Motion for Judgment on the Pleadings

(a) WHEN PRESENTED. If a complaint is duly served, the defendant shall serve an answer within 30 days after the issuance of the summons, except when a different time is prescribed by the court. The court shall prescribe the time for service of the answer when service of a complaint is made by publication or upon a party in a foreign country. A party served with a pleading stating a cross-claim shall serve an answer thereto within 20 days after service. The plaintiff shall serve a reply to a counterclaim in the answer within 20 days after service of the answer or, if a reply is ordered by the court, within 20 days after service of the order, unless the order otherwise directs. The United States or an officer or agency thereof shall serve an answer to a complaint within 35 days after the issuance of the summons, and shall serve an

answer to a cross-claim, or a reply to a counterclaim, within 35 days after service upon the United States attorney of the pleading in which the claim is asserted. The service of a motion permitted under this rule alters these periods of time as follows, unless a different time is fixed by order of the court: (1) if the court denies the motion or postpones its disposition until the trial on the merits, the responsive pleading shall be served within 10 days after notice of the court's action; (2) if the court grants a motion for a more definite statement, the responsive pleading shall be served within 10 days after the service of a more definite statement.

(b) APPLICABILITY OF RULE 12(b)-(h) F. R. Civ. P. Rule 12(b)-(h) F. R Civ. P. applies in adversary proceedings.

ADVISORY COMMITTEE NOTE

Subdivision (a) continues the practice of former Bankruptcy Rule 712(a) by requiring that the answer to a complaint be filed within 30 days after the issuance of the summons. Under Rule 7004(f), the summons must be served within 10 days of issuance. The other pleading periods in adversary proceedings are the same as those in civil actions before the district courts, except that the United States is allowed 35 rather than 60 days to respond.

Rule 12(b)(7) and (h)(2) F. R. Civ. P. refers to Rule 19 F. R. Civ. P. Pursuant to Rule 7002 these references are to Rule 19 F. R. Civ. P. as incorporated and modified by Rule 7019.

Rule 7013. Counterclaim and Cross-Claim

Rule 13 F. R. Civ. P. applies in adversary proceedings, except that a party sued by a trustee or debtor in possession need not state as a counterclaim any claim which he has against the debtor, his property, or the estate, unless the claim arose after the entry of an order for relief. A trustee or debtor in possession who fails to plead a counterclaim through oversight, inadvertence, or excusable neglect, or when justice so requires, may by leave of court amend the pleading, or commence a new adversary proceeding or separate action.

ADVISORY COMMITTEE NOTE

Rule 13(h) F. R. Civ. P. refers to Rule 19 F. R. Civ. P. Pursuant to Rule 7002 this reference is to Rule 19 F. R. Civ. P. as incorporated and modified by Rule 7019.

Rule 7014. Third-Party Practice

Rule 14 F. R. Civ. P. applies in adversary proceedings.

ADVISORY COMMITTEE NOTE

This rule does not purport to deal with questions of jurisdiction. The scope of the jurisdictional grant under 28 U.S.C. § 1471 and whether the doctrines of pendent or ancillary jurisdiction are applicable to adversary proceedings will be determined by the courts.

Rule 14 F. R. Civ. P. refers to Rules 12 and 13 F. R. Civ. P. Pursuant to Rule 7002 those references are to Rules 12 and 13 as incorporated and modified by Rules 7012 and 7013.

Rule 7015. Amended and Supplemental Pleadings

Rule 15 F. R. Civ. P. applies in adversary proceedings.

Rule 7016. Pre-Trial Procedure; Formulating Issues

Rule 16 F. R. Civ. P. applies in adversary proceedings.

Rule 7017. Parties Plaintiff and Defendant; Capacity

Rule 17 F. R. Civ. P. applies in adversary proceedings, except as provided in Rules 2010(d) and 5008(d).

ADVISORY COMMITTEE NOTE

Rules 2010(d) and 5008(d), which implement §§ 322 and 345 of the Code, authorize a party in interest to prosecute a claim on the bond of a trustee or depository in the name of the United States.

Rule 7018. Joinder of Claims and Remedies

Rule 18 F. R. Civ. P. applies in adversary proceedings.

Rule 7019. Joinder of Persons Needed for Just Determination

Rule 19 F. R. Civ. P. applies in adversary proceedings, except that (1) if a person joined as a party raises the defense that the bankruptcy court lacks jurisdiction over the subject

matter and the defense is sustained, the court shall dismiss such person from the adversary proceedings and (2) if a person joined as a party properly and timely raises the defense of improper venue, the court shall determine, as provided in 28 U.S.C. § 1477, whether that part of the proceeding involving the joined party shall be retained or transferred to another district, or whether the entire adversary proceeding shall be transferred to another district.

ADVISORY COMMITTEE NOTE

This rule addresses a situation different from that encountered by the district court when its jurisdiction is based on diversity of citizenship under 28 U.S.C. § 1332. Joining of a party whose citizenship is the same as that of an adversary destroys the district court's jurisdiction over the entire civil action but under 28 U.S.C. § 1471 the attempted joinder of such a person would not affect the bankruptcy court's jurisdiction over the original adversary proceeding.

Rule 7020. Permissive Joinder of Parties

Rule 20 F. R. Civ. P. applies in adversary proceedings.

Rule 7021. Misjoinder and Non-Joinder of Parties

Rule 21 F. R. Civ. P. applies in adversary proceedings.

Rule 7022. Interpleader

Rule 22(1) F. R. Civ. P. applies in adversary proceedings.

Rule 7023. Class Proceedings

Rule 23 F. R. Civ. P. applies in adversary proceedings.

Rule 7023.1. Derivative Proceedings by Shareholders

Rule 23.1 F. R. Civ. P. applies in adversary proceedings.

Rule 7023.2. Adversary Proceedings Relating to Unincorporated Associations

Rule 23.2 F. R. Civ. P. applies in adversary proceedings.

Rule 7024. Intervention

Rule 24 F. R. Civ. P. applies in adversary proceedings.

ADVISORY COMMITTEE NOTE

A person may seek to intervene in the case under the Code or in an adversary proceeding relating to the case under the Code. Intervention in a case under the Code is governed by Rule 2018 and intervention in an adversary proceeding is governed by this rule. Intervention in a case and intervention in an adversary proceeding must be sought separately.

Rule 7025. Substitution of Parties

Subject to the provisions of Rule 2012, Rule 25 F. R. Civ. P. applies in adversary proceedings.

ADVISORY COMMITTEE NOTE

Rule 25 F. R. Civ. P. refers to Rule 4 F. R. Civ. P. Pursuant to Rule 7002 that reference is to Rule 4 as incorporated and modified by Rule 7004.

Rule 7026. General Provisions Governing Discovery

Rule 26 F. R. Civ. P. applies in adversary proceedings.

Rule 7027. Depositions Before Adversary Proceedings or Pending Appeal

Rule 27 F. R. Civ. P. applies to adversary proceedings.

ADVISORY COMMITTEE NOTE

Rule 27(a)(2) F. R. Civ. P. refers to Rule 4 F. R. Civ. P. Pursuant to Rule 7002 the reference is to Rule 4 F. R. Civ. P. as incorporated and modified by Rule 7004.

Rule 7028. Persons Before Whom Depositions May Be Taken

Rule 28 F. R. Civ. P. applies in adversary proceedings.

Rule 7029. Stipulations Regarding Discovery Procedure

Rule 29 F. R. Civ. P. applies in adversary proceedings.

Rule 7030. Depositions Upon Oral Examination

Rule 30 F. R. Civ. P. applies in adversary proceedings.

ADVISORY COMMITTEE NOTE

Rule 30 F. R. Civ. P. refers to Rule 4 F. R. Civ. P. Pursuant to Rule 7002 that reference is a reference to Rule 4 F. R. Civ. P. as incorporated and modified by Rule 7004.

Rule 7031. Deposition Upon Written Questions

Rule 31 F. R. Civ. P. applies in adversary proceedings.

Rule 7032. Use of Depositions in Adversary Proceedings

Rule 32 F. R. Civ. P. applies in adversary proceedings.

Rule 7033. Interrogatories to Parties

Rule 33 F. R. Civ. P. applies in adversary proceedings.

Rule 7034. Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes

Rule 34 F. R. Civ. P.applies in adversary proceedings.

Rule 7035. Physical and Mental Examination of Persons

Rule 35 F. R. Civ. P. applies in adversary proceedings.

Rule 7036. Requests for Admission

Rule 36 F. R. Civ. P. applies in adversary proceedings.

Rule 7037. Failure to Make Discovery: Sanctions

Rule 37 F. R. Civ. P. applies in adversary proceedings.

Rule 7040. Assignment of Cases for Trial

Rule 40 F. R. Civ. P. applies in adversary proceedings.

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Rule 7041. Dismissal of Adversary Proceedings

Rule 41 F. R. Civ. P. applies in adversary proceedings, except that a complaint objecting to the debtor's discharge shall not be dismissed at the plaintiff's instance without notice to the trustee and only on order of the court containing terms and conditions which the court deems proper.

ADVISORY COMMITTEE NOTE

Dismissal of a complaint objecting to a discharge raises special concerns because the plaintiff may have been induced to dismiss by an advantage given or promised by the debtor or someone acting in his interest. Some courts by local rule or order have required the debtor and his attorney or the plaintiff to file an affidavit that nothing has been promised to the plaintiff in consideration of the withdrawal of the objection. By specifically authorizing the court to impose conditions in the order of dismissal this rule permits the continuation of this salutary practice.

Rule 41 F. R. Civ. P. refers to Rule 19 F. R. Civ. P. Pursuant to Rule 7002 that reference is to Rule 19 F. R. Civ. P. as incorporated and modified by Rule 7019.

Rule 7042. Consolidation of Adversary Proceedings; Separate Trials

Rule 42 F. R. Civ. P. applies in adversary proceedings.

Rule 7052. Findings by the Court

Rule 52 F. R. Civ. P. applies in adversary proceedings.

ADVISORY COMMITTEE NOTE

Rule 52(a) F. R. Civ. P. refers to Rule 12 F. R. Civ. P. Pursuant to Rule 7002 this reference is to Rule 12 F. R. Civ. P. as incorporated and modified by Rule 7012.

Rule 7054. Judgments; Costs

(a) JUDGMENTS. Rule 54(a)-(c) F. R. Civ. P. applies in adversary proceedings.

(b) COSTS. The court may allow costs to the prevailing party except when a statute of the United States or these rules otherwise provides. Costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law. Costs may be taxed by the clerk on one day's notice; on motion served within five days thereafter, the action of the clerk may be reviewed by the court.

Rule 7055. Default

Rule 55 F. R. Civ. P. applies in adversary proceedings.

Rule 7056. Summary Judgment

Rule 56 F. R. Civ. P. applies in adversary proceedings.

Rule 7062. Stay of Proceedings to Enforce a Judgment

Rule 62 F. R. Civ. P. applies in adversary proceedings except that an order granting relief from an automatic stay provided by § 362, § 922, or § 1301 of the Code, an order authorizing or prohibiting the use of cash collateral or property of the estate under § 363, and an order authorizing the trustee to obtain credit pursuant to § 364 shall be additional exceptions to Rule 62(a).

ADVISORY COMMITTEE NOTE

The additional exceptions set forth in this rule make applicable to those matters the consequences contained in Rule 62(c) and (d) with respect to orders in actions for injunctions.

Rule 7064. Seizure of Person or Property

Rule 64 F. R. Civ. P. applies in adversary proceedings.

Rule 7065. Injunctions

Rule 65 F. R. Civ. P. applies in adversary proceedings, except that a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c).

Rule 7067. Deposit in Court

Rule 67 F. R. Civ. P. applies in adversary proceedings.

Rule 7068. Offer of Judgment

Rule 68 F. R. Civ. P. applies in adversary proceedings.

Rule 7069. Execution

Rule 69 F. R. Civ. P. applies in adversary proceedings.

Rule 7070. Judgment for Specific Acts; Vesting Title

Rule 70 F. R. Civ. P. applies in adversary proceedings and the court may enter a judgment divesting the title of any party and vesting title in others whenever the real or personal property involved is subject to the jurisdiction of the bankruptcy court.

Rule 7071. Process in Behalf of and Against Persons Not Parties

Rule 71 F. R. Civ. P. applies in adversary proceedings.

Rule 7087. Transfer of Adversary Proceeding

On motion and after a hearing, the court may transfer an adversary proceeding or any part thereof to another district pursuant to 28 U.S.C. § 1475 and § 1477, except as provided in Rule 7019(2).

PART VIII

APPEALS TO DISTRICT COURT OR BANKRUPTCY APPELLATE PANEL

Rule 8001. Manner of Taking Appeal; Voluntary Dismissal; Effect of Appeal to Court of Appeals

(a) APPEAL AS OF RIGHT; HOW TAKEN. An appeal from a final judgment, order, or decree of a bankruptcy judge to a district court or bankruptcy appellate panel shall be taken by filing a notice of appeal with the clerk of the bankruptcy court within the time allowed by Rule 8002. Failure of an appellant to take any step other than the timely filing of a notice of appeal does not affect the validity of the appeal, but is ground only for such action as the district court or bankruptcy appellate panel deems appropriate, which may include dismissal of the appeal. The notice of appeal shall conform substantially to Official Form No. 35, shall contain the names of all parties to the judgment, order, or decree appealed from and the names, addresses and telephone numbers of their respective attorneys, and be accompanied by the prescribed fee. Each appellant shall file a sufficient number of copies of the notice of appeal to enable the clerk of the bankruptcy court to comply promptly with Rule 8004.

(b) APPEAL BY LEAVE; HOW TAKEN. An appeal from an interlocutory judgment, order or decree of a bankruptcy

judge as permitted by 28 U.S.C. § 1334(b) or § 1482(b) shall be taken by filing a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

(c) VOLUNTARY DISMISSAL.

(1) Before Docketing. If an appeal has not been docketed, the appeal may be dismissed by the bankruptcy judge on the filing of a stipulation for dismissal signed by all the parties, or on motion and notice by the appellant.

(2) After Docketing. If an appeal has been docketed and the parties to the appeal sign and file with the clerk of the district court or bankruptcy appellate panel an agreement that the appeal be dismissed and pay any court costs or fees that may be due, the clerk of the district court or bankruptcy appellate panel shall enter an order dismissing the appeal. An appeal may also be dismissed on motion of the appellant on terms and conditions fixed by the district court or bankruptcy appellate panel.

(d) EFFECT OF TAKING A DIRECT APPEAL TO THE COURT OF APPEALS.

(1) Dismissal of Pending Appeal to the District Court or the Bankruptcy Appellate Panel. On the filing of a notice of a direct appeal by agreement of the parties to the court of appeals under 28 U.S.C. § 1293(b), the clerk of the bankruptcy court shall enter an order vacating any prior notice of appeal to the district court or bankruptcy appellate panel from the same judgment, order, or decree of the bankruptcy court and, if the appeal to the district court or bankruptcy appellate panel has not been docketed, the clerk of the bankruptcy court shall enter an order dismissing the appeal. If the appeal to the district court or bankruptcy appellate panel has been docketed, the clerk of the bankruptcy court shall forward to the clerk of the district court or the clerk of the bankruptcy appellate panel a copy of the order vacating the notice of appeal and on receipt thereof the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter an order dismissing the appeal.

(2) Dismissal of Subsequent Appeal to the District Court or the Bankruptcy Appellate Panel. If a notice of direct appeal under 28 U.S.C. § 1293(b) is filed and

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thereafter a notice of appeal to the district court or bankruptcy appellate panel from the same judgment, order, or decree is filed, the clerk of the bankruptcy court shall enter an order dismissing the appeal to the district court or the bankruptcy appellate panel.

(3) Appeal After Dismissal of Direct Appeal by Court of Appeals. If the direct appeal under 28 U.S.C. § 1293(b) is dismissed by the court of appeals on the ground that the judgment, order, or decree appealed from is not final, the appellant or cross appellant may, within 10 days of entry of the order of the dismissal in the court of appeals, file a notice of appeal, as prescribed in subdivision (a) of this rule, accompanied by a motion for leave to appeal prepared in accordance with Rule 8003 and with proof of service in accordance with Rule 8008.

ADVISORY COMMITTEE NOTE

These rules in Part VIII apply only to appeals to the district courts or bankruptcy appellate panels. Subsequent appeals to the courts of appeals, or direct appeals by agreement of the parties under 28 U.S.C. § 1293(b), are governed by Federal Rules of Appellate Procedure.

Subdivisions (a) and (b) require that a notice of appeal be filed whenever a litigant seeks to secure appellate review by the district court or bankruptcy appellate panel. An appeal from an interlocutory order which will be heard only if leave is granted under 28 U.S.C. §§ 1334(b) or 1482(b) is taken by filing a notice of appeal accompanied by a motion for leave to appeal which complies with the requirements set forth in Rule 8003. Rule 8003 also governs other aspects of interlocutory appeals.

Subdivision (c) is an adaptation of Rule 42 F. R. App. P.

Subdivision (d) deals with the situation in which an appellant perfects an appeal to the district court or a bankruptcy appellate panel and also a direct appeal pursuant to 28 U.S.C. § 1293(b) to the court of appeals. This subdivision provides that once the appeal to the court of appeals is taken, a notice of appeal to the district court or bankruptcy appellate panel shall be dismissed and, if the first appeal is to the district court or bankruptcy appellate panel, the first appeal shall be dismissed. Paragraph (3) gives an appellant or cross appellant an opportunity to file an appeal to the district court or bankruptcy appellate panel if the court of appeals dismisses the direct appeal because the judgment, order, or decree appealed from is not final. Since the court of appeals has determined the judgment, order, or decree is not final, the new appeal is an appeal for which leave is necessary.

Rule 8002. Time for Filing Notice of Appeal

(a) TEN-DAY PERIOD. The notice of appeal shall be filed with the clerk of the bankruptcy court within 10 days of the date of the entry of the judgment, order, or decree appealed from. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 10 days of the date on which the first notice of appeal was filed, or within the time otherwise prescribed by this rule, whichever period last expires. If a notice of appeal is mistakenly filed with the district court or the bankruptcy appellate panel, the clerk of that court or the clerk of the appellate panel shall note thereon the date on which it was received and transmit it to the clerk of the bankruptcy court and it shall be deemed filed in the bankruptcy court on the date so noted.

(b) EFFECT OF MOTION ON TIME FOR APPEAL. If a timely motion is filed in the bankruptcy court by any party: (1) for judgment notwithstanding the verdict under Rule 9015; (2) under Rule 7052(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) under Rule 9023 to alter or amend the judgment; or (4) under Rule 9023 for a new trial, the time for appeal for all parties shall run from the entry of the order denying a new trial or granting or denying any other such motion. A notice of appeal filed before the disposition of any of the above motions shall have no effect; a new notice of appeal must be filed. No additional fees shall be required for such filing.

(c) EXTENSION OF TIME FOR APPEAL. The bankruptcy court may extend the time for filing the notice of appeal by any party for a period not to exceed 20 days from the expiration of the time otherwise prescribed by this rule. A request to extend the time for filing a notice of appeal must be made before the time for filing a notice of appeal has expired, except that a request made no more than 20 days after the expiration of the time for filing a notice of appeal may be granted upon a showing of excusable neglect if the judgment or order appealed from does not authorize the sale

of any property or the obtaining of credit or the incurring of debt under § 364 of the Code, or is not a judgment or order approving a disclosure statement, confirming a plan, dismissing a case, or converting the case to a case under another chapter of the Code.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of Rule 4(a) F. R. App. P. The time to appeal from a judgment, order, or decree of a bankruptcy judge is 10 days, rather than the 30 days provided for in the civil practice. The shortened time is specified in order to obtain prompt appellate review, often important to the administration of a case under the Code. If a timely notice of appeal is filed, other parties have an additional 10 days within which to file a notice of appeal. A notice of appeal filed within the additional 10 day period by an appellee is a cross appeal, but there is a separate appeal if a non-appellee files a notice of appeal within that 10 day period. The district courts and bankruptcy appellate panels have inherent authority to consolidate appeals.

Subdivision (b) is essentially the same as Rule 4(a)(4) of the F. R. App. P.

Subdivision (c) is similar to former Bankruptcy Rule 802(c). To expedite the disposition of appeals the maximum extension of time is 20 days instead of the 30 days provided by Rule 4(a)(5) of the F. R. App. P. Subject to the exceptions set forth in subdivision (c), the court may extend the time for taking an appeal when a motion for extension is filed after the expiration of the original 10 day period but no later than 20 days after the expiration of the original 10 day period. Orders of the bankruptcy court relating to the sale of property, extension of credit, confirmation of a plan, dismissal or conversion of the case, and approval of the disclosure statement are of such significance to the administration of the case, the parties in interest, and third parties that this subdivision requires that either an appeal or a motion for extension be filed within the original 10 day period.

If a timely notice of appeal is not filed, no appeal may be taken later. Former Bankruptcy Rule 803, which provided that a

referee's judgment became final when the appeal period expired, has been omitted as unnecessary.

Rule 8003. Leave to Appeal

(a) CONTENT OF MOTION; ANSWER. A motion for leave to appeal under 28 U.S.C. § 1334(b) or § 1482(b) shall contain: (1) a statement of the facts necessary to an understanding of the questions to be presented by the appeal; (2) a statement of those questions and of the relief sought; (3) a statement of the reasons why an appeal should be granted; and (4) a copy of the judgment, order, or decree complained of and of any opinion or memorandum relating thereto. Within 10 days after service of the motion an adverse party may file with the clerk of the bankruptcy court an answer in opposition.

(b) TRANSMITTAL; DETERMINATION OF MOTION. The clerk of the bankruptcy court shall transmit the notice of appeal, the motion for leave to appeal and any answer thereto to the clerk of the district court or the clerk of the bankruptcy appellate panel as soon as all parties have filed answers or the time for filing an answer has expired. The motion and answer shall be submitted without oral argument unless otherwise ordered.

(c) APPEAL IMPROPERLY TAKEN REGARDED AS A MOTION FOR LEAVE TO APPEAL. If a required motion for leave to appeal is not filed, but a notice of appeal is timely filed, the district court or bankruptcy appellate panel may grant leave to appeal or direct that a motion for leave to appeal be filed. The district court or the bankruptcy appellate panel may also deny leave to appeal but in so doing shall consider the notice of appeal as a motion for leave to appeal. Unless an order directing that a motion for leave to appeal be filed provides otherwise, the motion shall be filed within 10 days of entry of the order.

ADVISORY COMMITTEE NOTE

Subdivisions (a) and (b) of this rule are derived from Rules 5 and 6 F. R. App. P. The motion for leave to appeal is addressed to the district court or the bankruptcy appellate panel, although filed with the clerk of the bankruptcy court.

Subdivision (c) provides that if a party mistakenly believes the order appealed from is final and files only a notice of appeal, the appeal is not automatically dismissed. The district court or bankruptcy appellate panel has the options to direct that a motion be filed, to decide exclusively on the papers already filed to grant leave to appeal, or to deny leave to appeal. Cf. 28 U.S.C. § 2103.

Rule 8004. Service of the Notice of Appeal

The clerk of the bankruptcy court shall serve notice of the filing of a notice of appeal by mailing a copy thereof to counsel of record of each party other than the appellant or, if

a party is not represented by counsel, to the party at his last known address. Failure to serve notice shall not affect the validity of the appeal. The clerk shall note on each copy served the date of the filing of the notice of appeal and shall note in the docket the names of the parties to whom copies are mailed and the date of the mailing.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of Rule 3(d) F. R. App. P.

Rule 8005. Stay Pending Appeal

A motion for a stay of the judgment, order, or decree of a bankruptcy court, for approval of a supersedeas bond, or for other relief pending appeal must ordinarily be made in the first instance in the bankruptcy court. Notwithstanding Rule 7062 but subject to the power of the district court and the bankruptcy appellate panel reserved hereinafter, the bankruptcy court may suspend or order the continuation of other proceedings in the case under the Code or make any other appropriate order during the pendency of an appeal on such terms as will protect the rights of all parties in interest. A motion for such relief, or for modification or termination of relief granted by the bankruptcy court, may be made to the district court or the bankruptcy appellate panel,

but the motion shall show why the relief, modification, or termination was not obtained from the bankruptcy court. The district court or the bankruptcy appellate panel may condition the relief it grants under this rule on the filing of a bond or other appropriate security with the bankruptcy court. When an appeal is taken by a trustee, a bond or other appropriate security may be required, but when an appeal is taken by the United States or an officer or agency thereof or by direction of any department of the Government of the United States a bond or other security shall not be required.

ADVISORY COMMITTEE NOTE

The first, third, and fourth sentences of this rule are adaptations of Rule 8(a) and (b) F. R. App. P. The second sentence of the rule is derived from § 39(c) of the Bankruptcy Act and confers on the bankruptcy judge discretion respecting the stay or continuation of other proceedings in the case while an appeal is pending.

The last sentence of the rule, which specifically subjects a trustee to the same kind of security requirements as other litigants, is derived from former Bankruptcy Rule 805. The exemption of the United States from the bond or security requirements is the same as the exemption contained in Rule 62(e) F. R. Civ. P.

Sections 363(m) and 364(e) of the Code provide that unless an order approving a sale of property, or authorizing the obtaining of credit or the incurring of debt is stayed pending appeal, the sale of property to a good faith purchaser or a good faith extension of credit, with or without any priority or lien, shall not be affected by the reversal or modification of such order on appeal, whether or not the purchaser or creditor knows of the pendency of the appeal.

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Rule 8006. Record and Issues on Appeal

Within 10 days after filing the notice of appeal as provided by Rule 8001(a) or entry of an order granting leave to appeal the appellant shall file with the clerk of the bankruptcy court and serve on the appellee a designation of the items to be included in the record on appeal and a statement of the issues to be presented. Within seven days after the service of the statement of the appellant the appellee may file and serve on the appellant a designation of additional items to be included in the record on appeal and, if the appellee has filed a cross appeal, the appellee as cross appellant shall file and serve a statement of the issues to be presented on the cross appeal and a designation of additional items to be included in the record. A cross appellee may, within seven days of service of the statement of the cross appellant, file and serve on the cross appellant a designation of additional items to be included in the record. The record on appeal shall include the items so designated by the parties, the notice of appeal, the judgment, order, or decree appealed from, and any opinion, findings of fact, and conclusions of law of the court. If the record designated by any party includes a transcript of any proceeding or a part thereof, he shall immediately after filing the designation deliver to the

reporter and file with the clerk of the bankruptcy court a written request for the transcript and make satisfactory arrangements for payment of its cost. All parties shall take any other action necessary to enable the clerk to assemble and transmit the record.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of Rule 10(b) F. R. App. P. The last sentence of the rule is derived from Rule 11(a) F. R. App. P.

Rule 8007. Completion and Transmission of the Record; Docketing of the Appeal

(a) DUTY OF REPORTER TO PREPARE AND FILE TRANSCRIPT. On receipt of a request for a transcript, the reporter shall acknowledge on the request the date it was received and the date on which he expects to have the transcript completed and shall transmit the request, so endorsed, to the clerk of the bankruptcy court. On completion of the transcript the reporter shall file it with the clerk of the bankruptcy court. If the transcript cannot be completed within 30 days of receipt of the request the reporter shall seek an extension of time from the clerk of the bankruptcy court and the action of the clerk shall be entered in the docket and the parties notified. If the reporter does not file the transcript within the time allowed, the clerk of the bankruptcy court shall notify the bankruptcy judge.

(b) DUTY OF CLERK TO TRANSMIT RECORD; COPIES OF RECORD; DOCKETING OF APPEAL. When the record is complete for purposes of appeal, the clerk of the bankruptcy court shall transmit it forthwith to the clerk of the district court or the clerk of the bankruptcy appellate panel. If the record is to be retained in the bankruptcy court as provided in subdivision (c) of this rule, the clerk shall transmit the notice of appeal and the judgment, order, or decree appealed from, and any opinion, findings of fact and conclusions of law of the court. On receipt of the transmission the clerk of the district court or the clerk of the bankruptcy appellate panel shall enter the appeal in the docket and give notice promptly to all parties to the judgment, order, or decree appealed from of the date on which the appeal was docketed. If the bankruptcy appellate panel directs that additional copies of the record be furnished, the clerk of the bankruptcy appellate panel shall notify the appellant and, if the appellant fails to provide the copies, the clerk shall prepare the copies at the expense of the appellant.

(c) RETENTION OF RECORD IN BANKRUPTCY COURT. Any part of the record on appeal may be retained in the bankruptcy court if the parties to the appeal so stipulate

or the bankruptcy court so orders. The record on appeal for all purposes shall nevertheless be the record as designated under Rule 8006. When the bankruptcy court has ordered retention, the parties shall provide to the clerk of the bankruptcy court copies of any papers retained and the clerk shall transmit those copies to the district court or the bankruptcy appellate panel. If papers have been retained pursuant to a stipulation of the parties, on request of a party to the stipulation the clerk of the bankruptcy court shall transmit the papers so requested to the district court or the bankruptcy appellate panel. On order of the district court or the bankruptcy appellate panel the bankruptcy clerk shall transmit any retained papers to the clerk of that court or the clerk of the appellate panel.

(d) RECORD FOR PRELIMINARY HEARING. If prior to the time the record is transmitted a party moves in the district court or before the bankruptcy appellate panel for dismissal, for a stay pending appeal, for additional security on the bond on appeal or on a supersedeas bond, or for any intermediate order, the clerk of the bankruptcy court at the request of any party to the appeal shall transmit to the clerk of the district court or the clerk of the bankruptcy appellate panel the parts of the original record as any party to the appeal shall designate.

ADVISORY COMMITTEE NOTE

Subdivision (a) is an adaptation of Rule 11(b) F. R. App. P.

Subdivision (b) is similar to former Bankruptcy Rule 807. The duty of the clerk of the bankruptcy court to transmit the record as soon as the record is complete is derived from the second paragraph of Rule 11(b) F. R. App. P. The last sentence of the subdivision applies to appeals to bankruptcy appellate panels. Additional copies of the record may be needed when the appendix to the brief required under Rule 8009(b) is not adequate in the judgment of the bankruptcy appellate panel for disposition of the appeal. If additional copies are required, the appellant will arrange for the production of the copies; if the appellant fails to do so, the clerk of the bankruptcy appellate panel shall prepare the copies at the expense of the appellant.

Subdivision (c) is derived from subdivisions (c), (e) and (f) of Rule 11 F. R. App. P. and subdivision (d) is essentially the same as Rule 11(b) F. R. App. P.

Rule 8008. Filing and Service

(a) FILING. Papers required or permitted to be filed with the clerk of the district court or the clerk of the bankruptcy appellate panel may be filed by mail addressed to the clerk, but filing shall not be timely unless the papers are received by the clerk within the time fixed for filing, except that briefs shall be deemed filed on the day of mailing. An original and one copy of all papers shall be filed when an appeal is to the district court; an original and three copies shall be filed when an appeal is to a bankruptcy appellate panel. The district court or bankruptcy appellate panel may require that additional copies be furnished.

(b) SERVICE OF ALL PAPERS REQUIRED. Copies of all papers filed by any party and not required by these rules to be served by the clerk of the district court or the clerk of the bankruptcy appellate panel shall, at or before the time of filing, be served by the party or a person acting for him on all other parties to the appeal. Service on a party represented by counsel shall be made on counsel.

(c) MANNER OF SERVICE. Service may be personal or by mail. Personal service includes delivery of the copy to a clerk or other responsible person at the office of counsel. Service by mail is complete on mailing.

(d) PROOF OF SERVICE. Papers presented for filing shall contain an acknowledgment of service by the person served or proof of service in the form of a statement of the date and manner of service and of the names of the persons served, certified by the person who made service. The clerk may permit papers to be filed without acknowledgment or proof of service but shall require the acknowledgment or proof of service to be filed promptly thereafter.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of Rule 25 F. R. App. P. Motions, briefs, appendices when required, statements, and any other filed paper must be accompanied by the specified number of copies. Rules 8001 and 8004 govern the number of copies of the notice of appeal which must be filed.

Rule 8009. Briefs and Appendix; Filing and Service

(a) BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule or by order excuses the filing of briefs or specifies different time limits:

(1) The appellant shall serve and file his brief within 15 days after entry of the appeal on the docket pursuant to Rule 8007.

(2) The appellee shall serve and file his brief within 15 days after service of the brief of appellant. If the appellee has filed a cross appeal, the brief of the appellee shall contain the issues and argument pertinent to the cross appeal, denominated as such, and the response to the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee, and if the appellee has cross-appealed, the appellee may file and serve a reply brief to the response of the appellant to the issues presented in the cross appeal within 10 days after service of the reply brief of the appellant. No further briefs may be filed except with leave of the district court or the bankruptcy appellate panel.

(b) APPENDIX TO BRIEF. If the appeal is to a bankruptcy appellate panel, the appellant shall serve and file with his brief excerpts of the record as an appendix, which shall include the following:

(1) The complaint and answer or other equivalent pleadings;

(2) Any pretrial order;

(3) The judgment, order, or decree from which the appeal is taken;

(4) Any other orders relevant to the appeal;

(5) The opinion, findings of fact, or conclusions of law filed or delivered orally by the court and citations of the opinion if published;

(6) Any motion and response on which the court rendered decision;

(7) The notice of appeal; and

(8) The relevant entries in the bankruptcy court docket.

An appellee may also serve and file an appendix which contains material required to be included by the appellant but omitted by appellant.

ADVISORY COMMITTEE NOTE

Subdivision (a) of this rule is adapted from Rules 28(a) and 31(a) F. R. App. P. The introductory clause of the rule recognizes the desirability of allowing local and individual variation in the filing of briefs. The numbered paragraphs prescribe shorter periods than the corresponding periods allowed by Rule 31(a) F. R. App. P.

Subdivision (b), which is similar to an interim rule for bankruptcy appellate panels promulgated by the Ninth Circuit, applies only when an appeal is to an appellate panel. The appellant must prepare an appendix to the brief which contains the documents relevant to the appeal. With the appendix available to each member of the appellate panel, it is unlikely that multiple copies of the record will be necessary. The last sentence of the subdivision enables the appellee to correct an omission of the appellant.

Rule 30 F. R. App. P., which governs the preparation of the appendix in appeals taken to the courts of appeals, specifies fewer documents which must be included in the appendix but permits the parties to include any other material.

Rule 8010. Form of Briefs; Length

(a) FORM OF BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule otherwise provides, the form of brief shall be as follows:

(1) Brief of the Appellant. The brief of the appellant shall contain under appropriate headings and in the order here indicated:

(A) A table of contents, with page references, and a table of cases alphabetically arranged, statutes and other authorities cited, with references to the pages of the brief where they are cited.

(B) A statement of the basis of appellate jurisdiction.

(C) A statement of the issues presented and the applicable standard of appellate review.

(D) A statement of the case. The statement shall first indicate briefly the nature of the case, the course of the proceedings, and the disposition in the court below. There shall follow a statement of the facts relevant to the issues presented for review, with appropriate references to the record.

(E) An argument. The argument may be preceded by a summary. The argument shall contain the contentions of the appellant with respect to the issues presented, and the reasons therefor, with citations to the authorities, statutes and parts of the record relied on.

(F) A short conclusion stating the precise relief sought.

(2) Brief of the Appellee. The brief of the appellee shall conform to the requirements of paragraph (1) (A)-(E) of this subdivision, except that a statement of the basis of appellate jurisdiction, of the issues, or of the case need not be made unless the appellee is dissatisfied with the statement of the appellant.

(b) REPRODUCTION OF STATUTES, RULES, REGULATIONS, OR SIMILAR MATERIAL. If determination of the issues presented requires reference to the Code or other statutes, rules, regulations, or similar material, relevant parts thereof shall be reproduced in the brief or in an addendum or they may be supplied to the court in pamphlet form.

(c) LENGTH OF BRIEFS. Unless the district court or the bankruptcy appellate panel by local rule or order otherwise provides, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, tables of citations and any addendum containing statutes, rules, regulations, or similar material.

ADVISORY COMMITTEE NOTE

This rule is derived from subdivisions (a), (b), (c), and (f) of Rule 28 F. R. App. P.

When an appeal is to a bankruptcy appellate panel and an appendix is filed pursuant to Rule 8009(b) and reference is made in a brief to parts of the record included in the appendix, the reference should be to the appropriate pages of the appendix at which those parts appear.

Rule 8011. Motions

(a) CONTENT OF MOTIONS; RESPONSE; REPLY. A request for an order or other relief shall be made by filing

with the clerk of the district court or the clerk of the bankruptcy appellate panel a motion for such order or relief with proof of service on all other parties to the appeal. The motion shall contain or be accompanied by any matter required by a specific provision of these rules governing such a motion, shall state with particularity the grounds on which it is based, and shall set forth the order or relief sought. If a motion is supported by briefs, affidavits or other papers, they shall be served and filed with the motion. Any party may file a response in opposition to a motion other than one for a procedural order within seven days after service of the motion, but the district court or the bankruptcy appellate panel may shorten or extend the time for responding to any motion.

(b) DETERMINATION OF MOTIONS FOR PROCEDURAL ORDERS. Notwithstanding subdivision (a) of this rule, motions for procedural orders, including any motion under Rule 9006, may be acted on at any time, without awaiting a response thereto and without hearing. Any party adversely affected by such action may move for reconsideration, vacation, or modification of the action.

(c) DETERMINATION OF ALL MOTIONS. All motions will be decided without oral argument unless the court orders

otherwise. A motion for a stay, or for other emergency relief may be denied if not presented promptly.

(d) EMERGENCY MOTIONS. Whenever a movant requests expedited action on a motion on the ground that, to avoid irreparable harm, relief is needed in less time than would normally be required for the district court or bankruptcy appellate panel to receive and consider a response, the word "Emergency" shall precede the title of the motion. The motion shall be accompanied by an affidavit setting forth the nature of the emergency. The motion shall state whether all grounds advanced in support thereof were submitted to the bankruptcy judge and, if any grounds relied on were not submitted, why the motion should not be remanded to the bankruptcy judge for reconsideration. The motion shall include the office addresses and telephone numbers of moving and opposing counsel and shall be served pursuant to Rule 8008. Prior to filing the motion, the movant shall make every practicable effort to notify opposing counsel in time for counsel to respond to the motion. The affidavit accompanying the motion shall also state when and how opposing counsel was notified or if opposing counsel was not notified why it was not practicable to do so.

(e) POWER OF A SINGLE JUDGE TO ENTERTAIN MOTIONS. A single judge of a bankruptcy appellate panel may grant or deny any request for relief which under these rules may properly be sought by motion, except that a single judge may not dismiss or otherwise decide an appeal or a motion for leave to appeal. The action of a single judge may be reviewed by the panel.

ADVISORY COMMITTEE NOTE

Subdivisions (a), (b) and (e) of this rule conform substantially to subdivisions (a), (b) and (c) of Rule 27 F. R. App. P. Subdivisions (c) and (d) are taken from Rule 13(c) and (d) of the Rules of the First Circuit governing appeals to bankruptcy appellate panels.

Rule 8012. Oral Argument

Oral argument shall be allowed in all cases unless the district judge or the judges of the bankruptcy appellate panel unanimously determine after examination of the briefs and record, or appendix to the brief, that oral argument is not needed. Any party shall have an opportunity to file a statement setting forth the reason why oral argument should be allowed.

Oral argument will not be allowed if (1) the appeal is frivolous; (2) the dispositive issue or set of issues has been recently authoritatively decided; or (3) the facts and legal arguments are adequately presented in the briefs and record

and the decisional process would not be significantly aided by oral argument.

ADVISORY COMMITTEE NOTE

This rule is derived from Rule 34(a) F. R. App. P. The other details of oral argument which are covered by the remaining subdivisions of Rule 34 F. R. App. P. are not in these rules and are left to local rule or order of the court.

Rule 8013. Disposition of Appeal; Weight Accorded Bankruptcy Judge's Findings of Fact

On an appeal the district court or bankruptcy appellate panel may affirm, modify, or reverse a bankruptcy court's judgment, order, or decree or remand with instructions for further proceedings. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the bankruptcy court to judge the credibility of the witnesses.

ADVISORY COMMITTEE NOTE

This rule accords to the findings of a bankruptcy judge the same weight given the findings of a district judge under Rule 52 F. R. Civ. P. See also Rules 7052(a) and 9014.

Rule 8014. Costs

Except as otherwise provided by law, agreed to by the parties, or ordered by the district court or the bankruptcy appellate panel, costs shall be taxed against the losing party

on an appeal. If a judgment is affirmed or reversed in part, or is vacated, costs shall be allowed only as ordered by the court. Costs incurred in the production of copies of briefs, the appendices, and the record and in the preparation and transmission of the record, the cost of the reporter's transcript, if necessary for the determination of the appeal, the premiums paid for cost of supersedeas bonds or other bonds to preserve rights pending appeal and the fee for filing the notice of appeal shall be taxed by the clerk of the bankruptcy court as costs of the appeal in favor of the party entitled to costs under this rule.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of Rule 39(a), (c) and (e) of the F. R. App. P. Under this rule all costs are taxed by the clerk of the bankruptcy court.

Rule 8015. Motion for Rehearing

Unless the district court or the bankruptcy appellate panel by local rule or by court order otherwise provides, a motion for rehearing may be filed within 10 days after entry of the judgment of the district court or the bankruptcy appellate panel.

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ADVISORY COMMITTEE NOTE

This is an adaptation of the first sentence of Rule 40(a) F. R. App. P. The filing of a motion for rehearing does not toll the time for taking an appeal to the court of appeals from the district court or the bankruptcy appellate panel. Appeals from a district court or a bankruptcy appellate panel are to the appropriate court of appeals. Under Rule 4(a)(4) F.R.App.P. the filing of post-trial motions in the district court has the effect of vitiating any prior notice of appeal and, on the district court's disposition of those post-trial motions, a new appeal period starts. Rule 4 F.R.App.P. does not, however, contain any provision which stays or otherwise alters the time for taking an appeal to the court of appeals when a motion for rehearing is filed under Rule 8015 with the district court or bankruptcy appellate panel.

Rule 8016. Duties of Clerk of District Court and Bankruptcy Appellate Panel

(a) ENTRY OF JUDGMENT. The clerk of the district court or the clerk of the bankruptcy appellate panel shall prepare, sign and enter the judgment following receipt of the opinion of the court or the appellate panel or, if there is no opinion, following the instruction of the court or the appellate panel. The notation of a judgment in the docket constitutes entry of judgment.

(b) NOTICE OF ORDERS OR JUDGMENTS; RETURN OF RECORD. Immediately on the entry of a judgment or order the clerk of the district court or the clerk of the bankruptcy appellate panel shall transmit a notice of the entry to each party to the appeal and to the clerk of the bankruptcy court, together with a copy of any opinion

respecting the judgment or order, and shall make a note of the transmission in the docket. Original papers transmitted as the record on appeal shall be returned to the bankruptcy court on disposition of the appeal.

ADVISORY COMMITTEE NOTE

Subdivision (a) of this rule is adapted from Rule 36 F. R. App. P. Subdivision (b) is similar to subdivisions (c) and (d) of Rule 45 F. R. App. P.

Rule 8017. Stay of Judgment of District Court or Bankruptcy Appellate Panel

(a) AUTOMATIC STAY OF JUDGMENT ON APPEAL. Judgments of the district court or the bankruptcy appellate panel are stayed until the expiration of 10 days after entry, unless otherwise ordered by the district court or the bankruptcy appellate panel.

(b) STAY PENDING APPEAL TO THE COURT OF APPEALS. On motion and notice to the parties to the appeal, the district court or the bankruptcy appellate panel may stay its judgment pending an appeal to the court of appeals. The stay shall not extend beyond 30 days after the entry of the judgment of the district court or the bankruptcy appellate panel unless the period is extended for cause shown. If before the expiration of a stay entered pursuant to this subdivision there is an appeal to the court of appeals by the party who

obtained the stay, the stay shall continue until final disposition by the court of appeals. A bond or other security may be required as a condition to the grant or continuation of a stay of the judgment. A bond or other security may be required if a trustee obtains a stay but a bond or security shall not be required if a stay is obtained by the United States or an officer or agency thereof or at the direction of any department of the Government of the United States.

(c) POWER OF COURT OF APPEALS NOT LIMITED. This rule does not limit the power of a court of appeals or any judge thereof to stay proceedings during the pendency of an appeal or to suspend, modify, restore, or grant an injunction during the pendency of an appeal or to make any order appropriate to preserve the status quo or the effectiveness of the judgment subsequently to be entered.

ADVISORY COMMITTEE NOTE

This rule is derived from Rule 62 F. R. Civ. P. and Rule 41 F. R. App. P.

Subdivision (a) accords to the parties to an appeal 10 days within which to decide whether to pursue an appeal to the court of appeals. In ordinary civil litigation there is a similar opportunity. Rule 62(a) F. R. Civ. P. automatically stays enforcement of a district court's judgment in a civil action and Rule 41(a) F. R. App. P. provides that the mandate of the court of appeals shall not issue for 21 days, unless the court otherwise directs. The district court or bankruptcy appellate panel may reduce the 10 day period of this subdivision.

Subdivision (b) vests in the district courts and the bankruptcy appellate panels the same authority the courts of appeals have under Rule 41(b) F. R. App. P. to stay their judgments pending appeal. Perfection of an appeal to the court of appeals while a stay entered by the district court or bankruptcy appellate panel is in effect results in the automatic continuation of that stay during the course of the appeal in the court of appeals.

Subdivision (c) is the same as Rule 62(g) F. R. Civ. P.

Rule 8018. Rules by Circuit Councils and District Courts

Circuit councils which have authorized bankruptcy appellate panels pursuant to 28 U.S.C. § 160 and the district courts in districts in which an appellate panel has not been authorized may by action of a majority of the judges of the council or district court make and amend rules governing practice and procedure for appeals from the bankruptcy courts to the respective bankruptcy appellate panel or district court, not inconsistent with the rules of this Part VIII. Copies of rules and amendments so made shall on promulgation be furnished to the Administrative Office of the United States Courts. The clerk of each district court and the clerk of each bankruptcy appellate panel shall make appropriate arrangements, subject to the approval of the Director of the Administrative Office of the United States Courts, for making copies of such rules available to members of the public who may request them. In all cases not provided

for by rule, the district court or the bankruptcy appellate panel may regulate its practice in any manner not inconsistent with these rules.

ADVISORY COMMITTEE NOTE

This rule is similar to Rule 47 F. R. App. P. and Rule 83 F. R. Civ. P. Local rules governing procedure before the bankruptcy courts may be promulgated under Rule 9028.

Rule 8019. Suspension of Rules in Part VIII

In the interest of expediting decision or for other good cause, the district court or the bankruptcy appellate panel may suspend the requirements or provisions of the rules in Part VIII, except Rules 8001, 8002 and 8013, and may order proceedings in accordance with its direction.

ADVISORY COMMITTEE NOTE

This rule is derived from Rule 2 F. R. App. P.

PART IX

GENERAL PROVISIONS

Rule 9001. General Definitions

The definitions of words and phrases in § 101, § 902 and § 1101 and the rules of construction in § 102 of the Code govern their use in these rules. In addition, the following words and phrases used in these rules have the meanings indicated:

(1) "Act" means the Bankruptcy Act of 1898 as amended.

(2) "Bankruptcy court," "court," or "United States Bankruptcy Court" means the court of bankruptcy as defined in § 1(10) and created under § 2a of the Act and the United States Bankruptcy Court created under 28 U.S.C. § 151.

(3) "Bankruptcy Code" or "Code" means title 11 of the United States Code.

(4) "Clerk" means clerk of the bankruptcy court.

(5) "Debtor." When any act is required by these rules to be performed by a debtor or when it is necessary to compel attendance of a debtor for examination and the debtor is not a natural person: (A) if the debtor is a corporation, "debtor" includes, if designated by the court, any or all of its officers, members of its board of directors or trustees or of a similar

controlling body, a controlling stockholder or member, or any other person in control; (B) if the debtor is a partnership, "debtor" includes any or all of its general partners or, if designated by the court, any other person in control.

(6) "Firm" includes a partnership or professional corporation of attorneys or accountants.

(7) "Judgment" means any appealable order.

(8) "Mail" means first class, postage prepaid.

(9) "Regular associate" means any attorney regularly employed by, associated with, or counsel to an individual or firm.

(10) "Trustee" includes a debtor in possesion in a chapter 11 case.

Rule 9002. Meanings of Words in the Federal Rules of Civil Procedure When Applicable to Cases Under The Code

The following words and phrases used in the Federal Rules of Civil Procedure made applicable to cases under the Code by these rules have the meanings indicated unless they are inconsistent with the context:

(1) "Action" or "civil action" means an adversary proceeding or, when appropriate, a contested petition, or proceedings to vacate an order for relief or to determine any other contested matter.

(2) "Appeal" means an appeal as provided by 28 U.S.C. § 1334 or § 1482.

(3) "Clerk" or "clerk of the district court" means clerk of the bankruptcy court.

(4) "District court," "trial court," "court," or "judge" means bankruptcy judge.

(5) "Judgment" includes any order appealable to an appellate court.

Rule 9003. Prohibition of Ex Parte Contacts

Except as otherwise permitted by applicable law, any party in interest and any attorney, accountant, or employee of a party in interest shall refrain from ex parte meetings and communications with the bankruptcy judge concerning matters affecting a particular case or proceeding.

ADVISORY COMMITTEE NOTE

This rule regulates the actions of parties in interest and their attorneys or others employed by parties in interest. This regulation of the conduct of parties in interest and their representative is designed to insure that the bankruptcy system operates fairly and that no appearance of unfairness is created. See H. Rep. No. 95-595, 95th Cong., 1st Sess. 95 et seq. (1977).

This rule is not a substitute for or limitation of any applicable canon of professional responsibility or judicial conduct. See, e.g., Canon 7, EC7-35, Disciplinary Rule 7-110(B) of the Code of Professional Responsibility: "Generally, in adversary proceedings a lawyer should not communicate with a judge relative to a matter

pending before, or which is to be brought before, a tribunal over which he presides in circumstances which might have the effect or give the appearance of granting undue advantage to one party;" and Canon 3A(4) of the Code of Judicial Conduct: "A judge should . . . neither initiate nor consider ex parte or other communications concerning a pending or impending proceeding."

Rule 9004. General Requirements of Form

(a) LEGIBILITY; ABBREVIATIONS. All petitions, pleadings, schedules and other papers shall be clearly legible. Abbreviations in common use in the English language may be used.

(b) CAPTION. Each paper filed shall contain a caption setting forth the name of the court, the title of the case, the bankruptcy docket number, and a brief designation of the character of the paper.

ADVISORY COMMITTEE NOTE

Subdivision (b). Additional requirements applicable to the caption for a petition are found in Rule 1005, to the caption for notices to creditors in Rule 2002(m), and to the caption for a pleading or other paper filed in an adversary proceeding in Rule 7010. Failure to comply with this or any other rule imposing a merely formal requirement does not ordinarily result in the loss of rights. See Rule 9005.

Rule 9005. Harmless Error

Rule 61 F. R. Civ. P. applies in cases under the Code. When appropriate, the court may order the correction of any error or defect or the cure of any omission which does not affect substantial rights.

Rule 9006. Time

(a) COMPUTATION. In computing any period of time prescribed or allowed by these rules, by the local rules, by order of court, or by any applicable statute, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday, in which event the period runs until the end of the next day which is not a Saturday, a Sunday, or a legal holiday. When the period of time prescribed or allowed is less than seven days, intermediate Saturdays, Sundays, and legal holidays shall be excluded in the computation. As used in this rule and in Rule 5001(c), "legal holiday" includes New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President or the Congress of the United States, or by the state in which the bankruptcy court is held.

(b) ENLARGEMENT.

(1) IN GENERAL. Except as provided in paragraphs (2) and (3) of this subdivision, when an act is required or allowed to be done at or within a specified period by

these rules or by a notice given thereunder or by order of court, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if the request therefor is made before the expiration of the period originally prescribed or as extended by a previous order or (2) on motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect.

(2) ENLARGEMENT NOT PERMITTED. The court may not enlarge the time for taking action under Rule 1007(d), 1017(b)(3), 1019(2), 2003(a) and (d), 4001(b), 7052, 9015(f), 9023, and 9024.

(3) ENLARGEMENT LIMITED. The court may enlarge the time for taking action under Rules 1006(b)(2), 3002(c), 4003(b), 4004(a), 4007(c), and 8002 only to the extent and under the conditions stated in those rules.

(c) REDUCTION.

(1) IN GENERAL. Except as provided in paragraph (2) of this subdivision, when an act is required or allowed to be done at or within a specified time by these rules or by a notice given thereunder or by order

of court, the court for cause shown may in its discretion with or without motion or notice order the period reduced.

(2) REDUCTION NOT PERMITTED. The court may not reduce the time for taking action under Rules 2002(a)(4) and (a)(8), 2003(a), 3002(c), 3014, 3015, 4003(a), 4004(a), 4007(c) and 8002.

(d) FOR MOTIONS—AFFIDAVITS. A written motion, other than one which may be heard ex parte, and notice of any hearing shall be served not later than five days before the time specified for such hearing, unless a different period is fixed by these rules or by order of the court. Such an order may for cause shown be made on ex parte application. When a motion is supported by affidavit, the affidavit shall be served with the motion; and, except as otherwise provided in Rule 9023, opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time.

(e) TIME OF SERVICE. Service of process and service of any paper other than process or of notice by mail is complete on mailing.

(f) ADDITIONAL TIME AFTER SERVICE BY MAIL. When there is a right or requirement to do some act or undertake

some proceedings within a prescribed period after service of a notice or other paper and the notice or paper other than process is served by mail, three days shall be added to the prescribed period.

ADVISORY COMMITTEE NOTE

Subdivision (a). This rule is an adaptation of Rule 6 F. R. Civ. P. It governs the time for acts to be done and proceedings to be had in cases under the Code and any litigation arising therein.

Subdivision (b) is patterned after Rule 6(b) F. R. Civ. P. and Rule 26(b) F. R. App. P.

Paragraph (1) of this subdivision confers on the court discretion generally to authorize extensions of time for doing acts required or allowed by these rules or orders of court. The exceptions to this general authority to extend the time are contained in paragraphs (2) and (3).

In the interest of prompt administration of bankruptcy cases certain time periods may not be extended. Paragraph (2) lists the rules which establish time periods which may not be extended: Rule 1007(d), time for filing a list of 20 largest creditors; Rule 1017(b)(3), 30 day period for sending notice of dismissal for failure to pay the filing fee; Rule 1019(2), 20 day period for notice of conversion to a chapter 7 case; Rule 2003(a), meeting of creditors not more than 40 days after order for relief; Rule 2003(d), 10 days for filing a motion for resolution of an election dispute; Rule 3014, time for the § 1111(b)(2) election; Rule 4001(b), expiration of stay 30 days following the commencement of final hearing; Rule 7052(b), 10 day period to move to amend findings of fact; Rule 9015(f), 20 day period to move for judgment notwithstanding the verdict; Rule 9023, 10 day period to move for a new trial; and Rule 9024, time to move for relief from judgment.

Many rules which establish a time for doing an act also contain a specific authorization and standard for granting an extension of time and, in some cases, limit the length of an extension. In some instances it would be inconsisent with the objective of the rule and sound administration of the case to permit extension under Rule 9006(b)(1), but with respect to the other rules it is appropriate that

the power to extend time be supplemented by Rule 9006(b)(1). Unless a rule which contains a specific authorization to extend time is listed in paragraph (3) of this subdivision, an extension of the time may be granted under paragraph (1) of this subdivision. If a rule is included in paragraph (3) an extension may not be granted under paragraph (1). The following rules are listed in paragraph (3): Rule 1006(b)(2), time for paying the filing fee in installments; Rule 3002(c), 90 day period for filing a claim in a chapter 7 or 13 case; Rule 4003(b), 30 days for filing objections to a claim of exemptions; Rule 4004(a), 60 day period to object to a discharge; Rule 4007(b), 60 day period to file a dischargeability complaint; and Rule 8002, 10 days for filing a notice of appeal.

Subdivision (c). Paragraph (1) of this subdivision authorizes the reduction of the time periods established by these rules or an order of the court. Excluded from this general authority are the time periods established by the rules referred to in paragraph (2) of the subdivision: Rule 2002(a) and (b), 20 day and 25 day notices of certain hearings and actions in the case; Rule 2003(a), meeting of creditors to be not less than 20 days after the order for relief; Rule 3002(c), 90 days for filing a claim in a chapter 7 or 13 case; Rule 3014, time for § 1111(b)(2) election; Rule 3015, 10 day period after filing of petition to file a chapter 13 plan; Rule 4003(a), 15 days for a dependent to claim exemptions; Rule 4004(a), 60 day period to object to a discharge; Rule 4007(c), 60 day period to file a dischargeability complaint; and Rule 8002, 10 days for filing a notice of appeal. Reduction of the time periods fixed in the rules referred to in this subdivision would be inconsistent with the purposes of those rules and would cause harmful uncertainty.

Subdivision (d) is derived from Rule 6(d) F. R. Civ. P. The reference is to Rule 9023 instead of to Rule 59(c) F. R. Civ. P. because Rule 9023 incorporates Rule 59 F. R. Civ. P. but excepts therefrom motions to reconsider orders allowing and disallowing claims.

Subdivision (f) is new and is the same as Rule 6(e) F. R. Civ. P.

Rule 9007. General Authority to Regulate Notices

When notice is to be given under these rules, the court shall designate, if not otherwise specified herein, the time

within which, the persons to whom, and the form and manner in which the notice shall be given. When feasible, the court may order any notices under these rules to be combined.

Rule 9008. Service or Notice by Publication

Whenever these rules require or authorize service or notice by publication, the court shall, to the extent not otherwise specified in these rules, determine the form and manner thereof, including the newspaper or other medium to be used and the number of publications.

Rule 9009. Forms

The Official Forms prescribed by the Judicial Conference of the United States shall be observed and used with alterations as may be appropriate. Forms may be combined and their contents rearranged to permit economies in their use. The Director of the Administrative Office of the United States Courts may issue additional forms for use under the Code.

ADVISORY COMMITTEE NOTE

The rule continues the obligatory character of the Official Forms in the interest of facilitating the processing of the paperwork of bankruptcy administration, but provides that Official Forms will be prescribed by the Judicial Conference of the United States. The

Supreme Court and the Congress will thus be relieved of the burden of considering the large number of complex forms used in bankruptcy practice. The use of the Official Forms has generally been held subject to a "rule of substantial compliance" and some of these rules, for example Rule 1002, specifically state that the filed document need only "conform substantially" to the Official Form. See also Rule 9005. The second sentence recognizes the propriety of combining and rearranging Official Forms to take advantage of technological developments and resulting economies.

The Director of the Administrative Office is authorized to issue additional forms for the guidance of the bar.

Rule 9010. Representation and Appearances; Powers of Attorney

(a) AUTHORITY TO ACT PERSONALLY OR BY ATTORNEY. A debtor, creditor, equity security holder, indenture trustee, committee or other party may (1) appear in a case under the Code and act either in his or its own behalf or by an attorney authorized to practice in the court, and (2) perform any act not constituting the practice of law, by an authorized agent, attorney in fact, or proxy.

(b) NOTICE OF APPEARANCE. An attorney appearing for a party in a case under the Code shall file a notice of appearance with his name, office address and telephone number, unless his appearance is otherwise noted in the record.

(c) POWER OF ATTORNEY. The authority of any agent, attorney in fact, or proxy to represent a creditor for any purpose other than the execution and filing of a proof of

claim or the acceptance or rejection of a plan shall be evidenced by a power of attorney conforming substantially to Official Form No. 17 or Official Form No. 18. The execution of any such power of attorney shall be acknowledged before one of the officers enumerated in 28 U.S.C. § 459, § 953, or a person authorized to administer oaths under the laws of the state where the oath is administered.

ADVISORY COMMITTEE NOTE

This rule is substantially the same as former Bankruptcy Rule 910 and does not purport to change prior holdings prohibiting a corporation from appearing pro se. See In re Las Colinas Development Corp., 585 F.2d 7 (1st Cir. 1978).

Rule 9011. Signing and Verification of Papers

(a) SIGNATURE. Every petition, pleading, motion and other paper served or filed in a case under the Code on behalf of a party represented by an attorney, except a list, schedule, statement of financial affairs, statement of executory contracts, Chapter 13 Statement, or amendments thereto, shall be signed by at least one attorney of record in his individual name, whose office address and telephone number shall be stated. A party who is not represented by an attorney shall sign all papers and state his address and telephone number. The signature of an attorney or a party

constitutes a certificate by him that he has read the document; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harrass, to cause delay, or to increase the cost of litigation. If a document is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the person whose signature is required. If a document is signed in violation of this rule, the court on motion or on its own initiative, shall impose on the person who signed it, the represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the document, including a reasonable attorney's fee.

(b) VERIFICATION. Except as otherwise specifically provided by these rules, papers filed in a case under the Code need not be verified. Whenever verification is required by these rules, an unsworn declaration as provided in 28 U.S.C. § 1746 satisfies the requirement of verification.

(c) COPIES OF SIGNED OR VERIFIED PAPERS. When these rules require copies of a signed or verified paper, it shall suffice if the original is signed or verified and the copies are conformed to the original.

ADVISORY COMMITTEE NOTE

Subdivision (a). Excepted from the papers which an attorney for a debtor must sign are lists, schedules, statements of financial affairs, statements of executory contracts, Chapter 13 Statements and amendments thereto. Rule 1008 requires that these documents be verified by the debtor. Although the petition must also be verified, counsel for the debtor must sign the petition. See Official Form No. 1. An unrepresented party must sign all papers.

The last sentence of this subdivision authorizes a broad range of sanctions.

The word "document" is used in this subdivision to refer to all papers which the attorney or party is required to sign.

Subdivision (b) extends to all papers filed in cases under the Code the policy of minimizing reliance on the formalities of verification which is reflected in the third sentence of Rule 11 F. R. Civ. P. The second sentence of subdivision (b) permits the substitution of an unsworn declaration for the verification. See 28 U.S.C. § 1746. Rules requiring verification or an affidavit are as follows: Rule 1008, petitions, schedules, statements of financial affairs, Chapter 13 Statements and amendments; Rule 2006(e), list of multiple proxies and statement of facts and circumstances regarding their acquisition; Rule 4001(c), motion for ex parte relief from stay; Rule 7065, incorporating Rule 65(b) F. R. Civ. P. governing issuance of temporary restraining order; Rule 8011(d), affidavit in support of emergency motion on appeal.

Rule 9012. Affirmations

When in a case under the Code an oath is required to be taken, a solemn affirmation may be accepted in lieu thereof.

ADVISORY COMMITTEE NOTE

This rule is derived from Rule 43(d) F. R. Civ. P.

The provisions of former Bankruptcy Rule 912(a) relating to who may administer oaths have been deleted as unnecessary. Bankruptcy judges and the clerks and deputy clerks of bankruptcy courts are authorized by statute to administer oaths and affirmations and to take acknowledgments. 28 U.S.C. §§ 459, 953. A person designated to preside at the meeting of creditors has authority under Rule 2003(b)(1) to administer the oath. Administration of the oath at a deposition is governed by Rule 7028.

Rule 9013. Motions: Form and Service

A request for an order, except when an application is authorized by these rules, shall be by written motion, unless made during a hearing. The motion shall state with particularity the grounds therefor, and shall set forth the relief or order sought. Every written motion other than one which may be considered ex parte shall be served by the moving party on the trustee or debtor in possession and on those persons specified by these rules or, if service is not required or the persons to be served are not specified by these rules, the moving party shall serve the persons the court directs.

ADVISORY COMMITTEE NOTE

This rule is derived from Rule 5(a) and Rule 7(b)(1) F. R. Civ. P. Except when an application is specifically authorized by these rules, for example an application under Rule 2014 for approval of the employment of a professional, all requests for court action must be made by motion.

Rule 9014. Contested Matters

In a contested matter in a case under the Code not otherwise governed by these rules, relief shall be requested by motion, and reasonable notice and opportunity for hearing shall be afforded the party against whom relief is sought. No response is required under this rule unless the court orders an answer to a motion. The motion shall be served in the manner provided for service of a summons and complaint by Rule 7004, and, unless the court otherwise directs, the following rules shall apply: 7021, 7025, 7026, 7028-7037, 7041, 7042, 7052, 7054-7056, 7062, 7064, 7069, and 7071. The court may at any stage in a particular matter direct that one or more of the other rules in Part VII shall apply. A person who desires to perpetuate testimony may proceed in the same manner as provided in Rule 7027 for the taking of a deposition before an adversary proceeding. The clerk shall give notice to the parties of the entry of any order directing that additional rules of Part VII are applicable or that certain of the rules of Part VII are not applicable. The notice shall

be given within such time as is necessary to afford the parties a reasonable opportunity to comply with the procedures made applicable by the order.

ADVISORY COMMITTEE NOTE

Rules 1017(d), 3020(b)(1), 4001(a), 4003(d), and 6006(a), which govern respectively dismissal or conversion of a case, objections to confirmation of a plan, relief from the automatic stay and the use of cash collateral, avoidance of a lien under § 522(f) of the Code, and the assumption or rejection of executory contracts or unexpired leases, specifically provide that litigation under those rules shall be as provided in Rule 9014. This rule also governs litigation in other contested matters.

Whenever there is an actual dispute, other than an adversary proceeding, before the bankruptcy court, the litigation to resolve that dispute is a contested matter. For example, the filing of an objection to a proof of claim, to a claim of exemption, or to a disclosure statement creates a dispute which is a contested matter. Even when an objection is not formally required, there may be a dispute. If a party in interest opposes the amount of compensation sought by a professional, there is a dispute which is a contested matter.

When the rules of Part VII are applicable to a contested matter, reference in the Part VII rules to adversary proceedings is to be read as a reference to a contested matter. See Rule 9002(1).

Rule 9015. Jury Trial

(a) TRIAL BY JURY. Issues triable of right by jury shall, if timely demanded, be by jury, unless the parties or their attorneys of record, by written stipulation filed with the court or by an oral stipulation made in open court and entered in the record, consent to trial by the court sitting without a jury.

(b) DEMAND.

(1) TIME; FORM. Any party may demand a trial by jury of any issue triable by a jury by serving on the other parties a demand therefor in writing not later than 10 days after service of the last pleading directed to such issue. The demand may be indorsed on a pleading of the party. When a jury trial is demanded it shall be designated by the clerk in the docket as a jury matter.

(2) SPECIFICATION OF ISSUES. In his demand a party may specify the issues which he wishes so tried; otherwise he shall be deemed to have demanded trial by jury of all the issues so triable. If he has demanded trial by jury of only some of the issues, any other party within 10 days after service of the demand or such lesser time as the court may order, may serve a demand for trial by jury of any other or all of the issues.

(3) DETERMINATION BY COURT. On motion or on its own initiative the court may determine whether there is a right to trial by jury of the issues for which a jury trial is demanded or whether a demand for trial by jury in a proceeding on a contested petition shall be granted.

(c) WAIVER. The failure of a party to serve a demand as required by this rule and to file it as required by Rule 5005 constitutes a waiver of trial by jury. A demand for trial by jury made as herein provided may not be withdrawn without the consent of the parties.

(d) TRIAL BY THE COURT. Issues not demanded for trial by jury shall be tried by the court. Notwithstanding the failure of a party to demand a jury when such a demand might have been made of right, the court on its own initiative may order a trial by jury of any or all issues.

(e) ADVISORY JURY AND TRIAL BY CONSENT. In all actions not triable of right by jury the court on motion or on its own initiative may try any issue with an advisory jury or, except in actions against the United States when a statute of the United States provides for trial without a jury, the court, with the consent of both parties, may order a trial with a jury whose verdict has the same effect as if trial by jury had been a matter of right.

(f) APPLICABILITY OF CERTAIN OF THE FEDERAL RULES OF CIVIL PROCEDURE. Rules 47-51 of F. R. Civ. P. apply when a jury trial is conducted.

ADVISORY COMMITTEE NOTE

Subdivisions (a)-(f) of this rule are adaptations of subdivisions of Rules 38 and 39 F. R. Civ. P.

Whether a party is entitled to a jury trial is governed by 28 U.S.C. § 1480(a). Subsection (b) of § 1480 empowers the court to dispense with a jury trial on issues presented by a contested involuntary petition, even when a jury trial is properly demanded. The purpose of § 1480(b) is to insure that contested petitions are decided promptly. The court may under § 1480(b) and subdivision (b)(3) act sua sponte and direct that a contested petition be tried by the court instead of to a jury.

Rule 9027(i) governs the procedure for requesting trial by jury in a matter removed to a bankruptcy court.

Rule 9016. Subpoena

Rule 45 F. R. Civ. P. applies in bankruptcy cases under the Code.

ADVISORY COMMITTEE NOTE

Although Rule 7004(d) authorizes nationwide service of process, Rule 45 F. R. Civ. P. limits the subpoena power to the judicial district and places outside the district which are within 100 miles of the place of trial or hearing.

Rule 9017. Evidence

The Federal Rules of Evidence and Rules 43, 44 and 44.1 F. R. Civ. P. apply in cases under the Code.

ADVISORY COMMITTEE NOTE

Sections 251 and 252 of Public Law 95-598, amended Rule 1101 of the Federal Rules of Evidence to provide that the Federal Rules of Evidence apply in bankruptcy courts and to any case or proceeding under the Code. Rules 43, 44 and 44.1 of the

F. R. Civ. P., which supplement the Federal Rules of Evidence, are by this rule made applicable to cases under the Code.

Examples of bankruptcy rules containing matters of an evidentiary nature are: Rule 2011, evidence of debtor retained in possession; Rule 3001(f), proof of claim constitutes prima facie evidence of the amount and validity of a claim; and Rule 5007(c), sound recording of court proceedings constitutes the record of the proceedings.

Rule 9018. Secret Confidential, Scandalous, or Defamatory Matter

On motion or on its own initiative, with or without notice, the court may make any order which justice requires (1) to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information, (2) to protect any entity against scandalous or defamatory matter contained in any paper filed in a case under the Code, or (3) to protect governmental matters that are made confidential by statute or regulation. If an order is entered under this rule without notice, any entity affected thereby may move to vacate or modify the order, and after a hearing on notice the court shall determine the motion.

ADVISORY COMMITTEE NOTE

This rule provides the procedure for invoking the court's power under § 107 of the Code.

Rule 9019. Compromise and Arbitration

(a) COMPROMISE. On motion by the trustee and after a hearing on notice to creditors, the debtor and indenture trustees as provided in Rule 2002(a) and to such other persons as the court may designate, the court may approve a compromise or settlement.

(b) AUTHORITY TO COMPROMISE OR SETTLE CONTROVERSIES WITHIN CLASSES. After a hearing on such notice as the court may direct, the court may fix a class or classes of controversies and authorize the trustee to compromise or settle controversies within such class or classes without further hearing or notice.

(c) ARBITRATION. On stipulation of the parties to any controversy affecting the estate the court may authorize the matter to be submitted to final and binding arbitration.

ADVISORY COMMITTEE NOTE

Subdivisions (a) and (c) of this rule are essentially the same as the provisions of former Bankruptcy Rule 919 and subdivision (b) is the same as former Rule 8-514(b), which was applicable to railroad reorganizations. Subdivision (b) permits the court to deal efficiently with a case in which there may be a large number of settlements.

Rule 9020. Criminal Contempt Proceedings

(a) PROCEDURE

(1) SUMMARY DISPOSITION. Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481 may be punished summarily by a bankruptcy judge if he saw or heard the conduct constituting the contempt and if it was committed in his actual presence. The order of contempt shall recite the facts and shall be signed by the judge and entered of record.

(2) DISPOSITION AFTER A HEARING. Criminal contempt which may be punished by a bankruptcy judge acting pursuant to 28 U.S.C. § 1481, except when determined as provided in paragraph (1) of this subdivision, may be punished by the bankruptcy judge only after a hearing on notice. The notice shall be in writing, shall state the essential facts constituting the criminal contempt charged and describe the contempt as criminal and shall state the time and place of hearing, allowing a reasonable time for the preparation of the defense. The notice may be given on the court's own initiative or on application of the United States attorney or by an attorney appointed by the court for

that purpose. If the contempt charged involves disrespect to or criticism of a bankruptcy judge, that judge is disqualified from presiding at the hearing except with the consent of the person charged.

(3) CERTIFICATION TO DISTRICT COURT. If it appears to a bankruptcy judge that criminal contempt has occurred but the court is without power under 28 U.S.C. § 1481, to punish or to impose the appropriate punishment for the criminal contempt the judge may certify the facts to the district court.

(b) RIGHT TO JURY TRIAL. Nothing in this rule shall be construed to impair the right to jury trial whenever it otherwise exists.

ADVISORY COMMITTEE NOTE

Section 1481 of Title 28 provides that a bankruptcy court "may not . . . punish a criminal contempt not committed in the presence of the judge of the court or warranting a punishment of imprisonment." Rule 9020 does not enlarge the power of bankruptcy courts.

Subdivision (a) is adapted from former Bankruptcy Rule 920 and Rule 42 F. R. Crim. P. Paragraph (1) of the subdivision permits summary imposition of punishment for contempt if the conduct is in the presence of the court and is of such nature that the conduct "obstruct[s] the administration of justice." See 18 U.S.C. § 401(a). Cases interpreting Rule 42(a) F. R. Crim. P. have held that when criminal contempt is in question summary disposition should be the exception: summary disposition should be reserved for situations where it is necessary to protect the judicial institution. 3 Wright, Federal Practice & Procedure—Criminal § 707 (1969). Those cases are equally pertinent to the application of this rule and, therefore,

contemptuous conduct in the presence of the judge may often be punished only after the notice and hearing requirements of subdivision (b) are satisfied.

If the bankruptcy court concludes it is without power to punish or to impose the proper punishment for conduct which constitutes contempt, subdivision (a)(3) authorizes the bankruptcy court to certify the matter to the district court.

Subdivision (b) makes clear that when a person has a constitutional or statutory right to a jury trial in a criminal contempt matter this rule in no way affects that right. See Frank v. United States, 395 U.S. 147 (1969).

The Federal Rules of Civil Procedure do not specifically provide the procedure for the imposition of civil contempt sanctions. The decisional law governing the procedure for imposition of civil sanctions by the district courts will be equally applicable to the bankruptcy courts.

Rule 9021. Entry of Judgment; District Court Record of Judgment

(a) ORIGINAL ENTRY OF JUDGMENT OF BANKRUPTCY COURT. Subject to the provisions of Rule 54(b) F. R. Civ. P: (1) on a general verdict of a jury, or on a decision by the court that a party shall recover only a sum certain or costs or that all relief shall be denied, the clerk, unless the court otherwise orders, shall forthwith prepare, sign and enter the judgment without awaiting any direction by the court; (2) on a decision by the court granting other relief, or on a special verdict or a general verdict accompanied by answers to interrogatories, the court shall promptly approve the form of the judgment, and the clerk shall thereupon enter

it. Every judgment entered in an adversary proceeding or contested matter shall be set forth on a separate document. A judgment is effective when entered as provided in Rule 5003. Entry of the judgment shall not be delayed for the taxing of costs.

(b) DISTRICT COURT RECORD OF JUDGMENTS OF BANKRUPTCY COURTS. On certification by the clerk of the bankruptcy court to the clerk of the district court of a copy of a judgment of the bankruptcy court for the recovery of money or property, the clerk of the district court shall keep and index the copy in substantially the form and manner prescribed by Rule 79 F. R. Civ. P. for judgments of the district court. Retention and indexing of a judgment by the clerk of the district court under this subdivision shall not affect its appealability or proceedings on appeal from the judgment under the rules in Part VIII, the availability of process to enforce the judgment under Rule 7069, or the availability of relief under Rule 7062 or 7070 but after it has been so indexed, the judgment shall have the same effect and may be enforced as a judgment of the district court so indexed.

(c) ENTRY OF JUDGMENT OF DISTRICT COURT. A judgment entered by a district judge in a case or proceeding

under the Code shall be indexed in the district court's civil docket. The clerk of the district court shall certify a copy of the judgment to the clerk of the bankruptcy court.

ADVISORY COMMITTEE NOTE

Subdivision (a). This rule is derived from Rule 58 F. R. Civ. P. The requirement that a judgment entered in an adversary proceeding or contested matter be set forth on a separate document is to eliminate uncertainty as to whether an opinion or memorandum of the court is a judgment. There is no sound reason to require that every order in a case under the Code be evidenced by a separate document.

Subdivision (b) establishes a procedure for entering a judgment of a bankruptcy court for the recovery of money or property in an index of judgments kept by the clerk of the district court. It clarifies the availability of the same remedies for the enforcement of a bankruptcy court judgment as those provided for the enforcement of a district court judgment. See 28 U.S.C. §§ 1961-63. When indexed in accordance with subdivison (b) of this rule a judgment of the bankruptcy court may be found by anyone searching for liens of record in the judgment records of the district court. Certification of a copy of the judgment to the clerk of the district court provides a basis for registration of the judgment pursuant to 28 U.S.C. § 1963 in any other district. When so registered, the judgment may be enforced by issuance of execution and orders for supplementary proceedings that may be served anywhere within the state where the registering court sits. See 7 Moore, Federal Practice 2409-11 (2d ed. 1971). The procedures available in the district court are not exclusive, however, and the holder of a judgment entered by the bankruptcy court may use the remedies under Rules 7069 and 7070 even if the judgment is indexed by the clerk of the district court.

Subdivision (c) makes it clear that when a district court hears a matter reserved to it by 28 U.S.C. §§ 1471, 1481, its judgments are entered in the district court's civil docket and in the docket of the bankruptcy court. When the district court acts as an appellate court, Rule 8016(a) governs the entry of judgments on appeal.

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Rule 9022. Notice of Judgment or Order

(a) JUDGMENT OR ORDER OF BANKRUPTCY JUDGE. Immediately on the entry of a judgment or order the clerk shall serve a notice of the entry by mail in the manner provided by Rule 7005 on the contesting parties and on other entities as the court directs. Service of the notice shall be noted in the docket. Lack of notice of the entry does not affect the time to appeal or relieve or authorize the court to relieve a party for failure to appeal within the time allowed, except as permitted in Rule 8002.

(b) JUDGMENT OR ORDER OF DISTRICT JUDGE. Notice of a judgment or order entered by a district judge while acting in a case under the Code is governed by Rule 77(d) F. R. Civ. P.

ADVISORY COMMITTEE NOTE

Subdivision (a) of this rule is an adaptation of Rule 77(d) F. R. Civ. P.

Subdivision (b) complements Rule 9021(b). When a district court acts as an appellate court, Rule 8016(b) requires the clerk to give notice of the judgment on appeal.

Rule 9023. New Trials; Amendment of Judgments

Rule 59 F. R. Civ. P. applies in cases under the Code, except as provided in Rule 3008.

ADVISORY COMMITTEE NOTE

Rule 59 F. R. Civ. P. regulates motions for a new trial and amendment of judgment. Those motions must be served within 10 days of the entry of judgment. No similar time limit is contained in Rule 3008 which governs reconsideration of claims.

Rule 9024. Relief from Judgment or Order

Rule 60 F. R. Civ. P. applies in cases under the Code except that (1) a motion to reopen a case under the Code or for the reconsideration of an order allowing or disallowing a claim against the estate entered without a contest is not subject to the one year limitation prescribed in Rule 60(b), (2) a complaint to revoke a discharge in a chapter 7 liquidation case may be filed only within the time allowed by § 727(e) of the Code, and (3) a complaint to revoke an order confirming a plan may be filed only within the time allowed by § 1144 or § 1330.

ADVISORY COMMITTEE NOTE

Motions to reopen cases are governed by Rule 5010. Reconsideration of orders allowing and disallowing claims is governed by Rule 3008. For the purpose of this rule all orders of the bankruptcy court are subject to Rule 60 F. R. Civ. P.

Pursuant to § 727(e) of the Code a complaint to revoke a discharge must be filed within one year of the entry of the discharge or, when certain grounds of revocation are asserted, the later of one year after the entry of the discharge or the date the case is closed. Under § 1144 and § 1330 of the Code a party must file a complaint to revoke an order confirming a chapter 11 or 13 plan within 180 days of its entry. Clauses (2) and (3) of this rule make it clear that the time periods established by §§ 727(e), 1144 and 1330 of the Code may not be circumvented by the invocation of F. R. Civ. P. 60(b).

Rule 9025. Security: Proceedings Against Sureties

Whenever the Code or these rules require or permit the giving of security by a party, and security is given in the form of a bond or stipulation or other undertaking with one or more sureties, each surety submits to the jurisdiction of the court, and liability may be determined in an adversary proceeding governed by the rules in Part VII.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of Rule 65.1 F. R. Civ. P. and applies to any surety on a bond given pursuant to § 303(e) of the Code, Rules 2001, 2010, 5008, 7062, 7065, 8005, or any other rule authorizing the giving of such security.

Rule 9026. Exceptions Unnecessary

Rule 46 F. R. Civ. P. applies in cases under the Code.

Rule 9027. Removal

(a) APPLICATION.

(1) WHERE FILED; FORM AND CONTENT. An application for removal shall be filed in the bankruptcy court for the district and division within which is located the state or federal court where the civil action is pending. The application shall be verified and contain a short and plain statement of the facts which entitle

the applicant to remove and be accompanied by a copy of all process and pleadings.

(2) TIME FOR FILING; CIVIL ACTION INITIATED BEFORE COMMENCEMENT OF THE CASE UNDER THE CODE. If the claim or cause of action in a civil action is pending when a case under the Code is commenced, an application for removal may be filed in the bankruptcy court only within the longest of (A) 90 days after the order for relief in the case under the Code, (B) 30 days after entry of an order terminating a stay, if the claim or cause of action in a civil action has been stayed under § 362 of the Code, or (C) 30 days after a trustee qualifies in a chapter 11 reorganization case but not later than 180 days after the order for relief.

(3) TIME FOR FILING; CIVIL ACTION INITIATED AFTER COMMENCEMENT OF THE CASE UNDER THE CODE. If a case under the Code is pending when a claim or cause of action is asserted in a court other than a bankruptcy court, an application for removal may be filed in the bankruptcy court only within the shorter of (A) 30 days after receipt, through service or otherwise, of a copy of the initial pleading setting forth

the claim or cause of action sought to be removed or (B) 30 days after receipt of the summons if the initial pleading has been filed with the court but not served with the summons.

(b) BOND. An application for removal, except when the applicant is the trustee, debtor, debtor in possession, or the United States shall be accompanied by a bond with good and sufficient surety conditioned that the party will pay all costs and disbursements incurred by reason of the removal should it be determined that the claim or cause of action was not removable or was improperly removed.

(c) NOTICE. Promptly after filing the application and the bond, if required, in the bankruptcy court, the applicant shall serve a copy of the application on all parties to the removed claim or cause of action.

(d) FILING IN NON-BANKRUPTCY COURT. Removal of the claim or cause of action is effected on the filing of a copy of the removal application with the clerk of the court from which the claim or cause of action is removed. The parties shall proceed no further in that court unless and until the claim or cause of action is remanded.

(e) REMAND. A motion for remand of the removed claim or cause of action may be filed only in the bankruptcy court

and shall be served on the parties to the removed claim or cause of action. A motion to remand shall be determined as soon as practicable. A certified copy of an order of remand shall be mailed to the clerk of the court from which the claim or cause of action was removed.

(f) PROCEDURE AFTER REMOVAL.

(1) After removal of a claim or cause of action to a bankruptcy court the bankruptcy court may issue all necessary orders and process to bring before it all proper parties whether served by process issued by the court from which the claim or cause of action was removed or otherwise.

(2) The bankruptcy court may require the applicant to file with the clerk copies of all records and proceedings relating to the claim or cause of action in the court from which the claim or cause of action was removed.

(g) PROCESS AFTER REMOVAL. If one or more of the defendants has not been served with process, the service has not been perfected prior to removal, or the process served proves to be defective, such process or service may be completed or new process issued in the same manner as in adversary proceedings originally filed in the bankruptcy

court. This subdivision shall not deprive any defendant on whom process is served after removal of his right to move to remand the case.

(h) APPLICABILITY OF PART VII. The rules of Part VII apply to a claim or cause of action removed to a bankruptcy court from a federal or state court and govern procedure after removal. Repleading is not necessary unless the court so orders. In a removed action in which the defendant has not answered, he shall answer or present the other defenses or objections available to him under the rules of Part VII within 20 days following the receipt through service or otherwise of a copy of the initial pleading setting forth the claim for relief on which the action or proceeding is based, or within 20 days following the service of summons on such initial pleading, or within five days following the filing of the application for removal, whichever period is longest.

(i) TIME FOR FILING A DEMAND FOR JURY TRIAL. If at the time of removal all necessary pleadings have been served, a party entitled to trial by jury shall be accorded it, if his demand therefor is served within 10 days following the filing of the application for removal if he is the applicant, or if he is not the applicant, within 10 days following service on him of notice of the filing of the application. A party who,

prior to removal, has made an express demand for trial by jury in accordance with federal or state law, need not renew the demand after removal. If state law applicable in the court from which the claim or cause of action is removed does not require the parties to make an express demand for trial by jury, they need not make a demand after removal unless the bankruptcy court so directs. The bankruptcy court may so direct on its own initiative and shall so direct at the request of any party to the removed claim or cause of action. The failure of a party to make demand as directed constitutes a waiver by him of trial by jury.

(j) RECORD SUPPLIED. When a party is entitled to copies of the records and proceedings in any civil action or proceeding in a federal or a state court, to be used in a bankruptcy court, and the clerk of the federal or state court, on demand accompanied by payment or tender of the lawful fees, fails to deliver certified copies, the bankruptcy court may, on affidavit reciting the facts, direct such record to be supplied by affidavit or otherwise. Thereupon the proceedings, trial and judgment may be had in the bankruptcy court, and all process awarded, as if certified copies had been filed in the bankruptcy court.

(k) ATTACHMENT OR SEQUESTRATION; SECURITIES. When a claim or cause of action is removed to a bankruptcy court, any attachment or sequestration of property in the court from which the claim or cause of action was removed shall hold the property to answer the final judgment or decee in the same manner as the property would have been held to answer final judgment or decree had it been rendered by the court from which the claim or cause of action was removed. All bonds, undertakings, or security given by either party to the claim or cause of action prior to its removal shall remain valid and effectual notwithstanding such removal. All injunctions issued, orders entered and other proceedings had prior to removal shall remain in full force and effect until dissolved or modified by the bankruptcy court.

ADVISORY COMMITTEE NOTE

Under 28 U.S.C. § 1478(a) "any claim or cause of action in a civil action, other than a proceeding before the United States Tax Court or a civil action by a Government unit to enforce [a] ... regulatory or police power" may be removed "if the bankruptcy courts have jurisdiction over such claim or cause of action." This rule specifies how removal is accomplished, the procedure thereafter, and the procedure to request remand of the removed claim or cause of action. If the claim or cause of action which is removed to the bankruptcy court is subject to the automatic stay of § 362 of the Code, the litigation may not proceed in the bankruptcy court until relief from the stay is granted.

The subdivisions of this rule conform substantially to 28 U.S.C. §§ 1446-1450 and Rule 81(a) F. R. Civ. P. pertaining to removal to the district courts.

Subdivision (a)(1) is derived from 28 U.S.C. § 1446(a).

Subdivisions (a)(2) and (a)(3) are derived from paragraphs one and two of 28 U.S.C. § 1446(b). Timely exercise of the right to remove is as important in bankruptcy cases as in removals from a state court to a district court.

Subdivision (a)(2) governs the situation in which there is litigation pending and a party to the litigation becomes a debtor under the Code. Frequently, removal would be of little utility in such cases because the pending litigation will be stayed by § 362(a) on commencement of the case under the Code. As long as the stay remains in effect there is no reason to impose a time limit for removal to the bankruptcy court and, therefore, clause (B) of subdivision (a)(2) provides that a removal application may be filed within 30 days of entry of an order terminating the stay. Parties to stayed litigation will not be required to act immediately on commencement of a case under the Code to protect their right to remove. If the pending litigation is not stayed by § 362(a) of the Code, the removal application must ordinarily be filed within 90 days of the order for relief. Clause (C) contains an alternative period for a chapter 11 case. If a trustee is appointed, the removal application may be filed within 30 days of the trustee's qualification, provided that the removal application is filed not more than 180 days after the order for relief.

The removal application must be filed within the longest of the three possible periods. For example, in a chapter 11 case if the 90 day period expires but a trustee is appointed shortly thereafter, the removal application may be filed within 30 days of the trustee's qualification but not later than 180 days after the order for relief. Nevertheless, if the claim or cause of action in the civil action is stayed under § 362, the application may be filed after the 180 day period expires, provided the application is filed within 30 days of an order terminating the stay.

Subdivision (a)(3) applies to the situation in which the case under the Code is pending when the removable claim or cause of action is asserted in a civil action initiated in other than the bankruptcy court. The time for filing the application for removal begins to run on receipt of the first pleading containing the removable claim or cause of action. Only litigation not stayed by the code or by court order may properly be initiated after the case under the Code is commenced. See e.g., § 362(a).

Subdivision (b). With one exception, this subdivision is the same as 28 U.S.C. § 1446(d). The exemption from the bond requirement is enlarged to include a trustee or debtor in possession. Complete exemption from the bond requirement for removal is appropriate because of the limited resources which may be available at the beginning of a case and the small probability that an action will be improperly removed.

Recovery on the bond is permitted only when the removal was improper. If the removal is proper but the bankruptcy court orders the action remanded on equitable grounds, 28 U.S.C. § 1478(b), there is no recovery on the bond.

Subdivisions (c) and (d) are patterned on 28 U.S.C. § 1446(e).

Subdivision (e). There is no provision in the Federal Rules of Civil Procedure for seeking remand. The first sentence of this subdivision requires that a request for remand be by motion and that the moving party serve all other parties; however, no hearing is required. In recognition of the intrusion of the removal practice on the state and federal courts from which claims or causes of action are removed, the subdivision directs the bankruptcy court to decide remand motions as soon as practicable. The last sentence of this subdivision is derived from 28 U.S.C. § 1446(c).

Subdivisions (f) and (g), with appropriate changes to conform them to the bankruptcy context, are the same as 28 U.S.C. § 1447(a) and (b) and 28 U.S.C. § 1448, respectively.

Subdivisions (h) and (i) are taken from Rule 81(c) F. R. Civ. P.

Subdivisions (j) and (k) are derived from 28 U. S.C. § 1449 and § 1450, respectively.

Remand orders of bankruptcy judges are not appealable. 28 U.S.C. § 1478(b).

This rule does not deal with the question whether a single plaintiff or defendant may remove a claim or cause of action if there are two or more plaintiffs or defendants. See 28 U.S.C. § 1478.

Rule 9028. Disability of a Judge

If by reason of death, sickness, or other disability, a judge before whom an involuntary petition or an adversary proceeding has been tried or a hearing conducted is unable to perform the duties to be performed by the court under these rules after a verdict is returned, or findings of fact and conclusions of law or a memorandum is filed, then any other judge regularly sitting in or assigned to the court in which the trial or hearing was conducted may perform those duties; but if the other judge is satisfied that he cannot perform those duties because he did not preside or for any other reason, he may in his discretion grant a new trial.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of Rule 63 F. R. Civ. P.

Rule 9029. Local Bankruptcy Rules

Each bankruptcy court by action of a majority of the judges thereof may make and amend rules governing its practice and procedure not inconsistent with these rules. Copies of rules and amendments so made shall on their promulgation be furnished to the Administrative Office of the United States Courts. The clerk of each court shall make appropriate arrangements, subject to the approval of the

Director of the Administrative Office of the United States Courts, for making copies of the rules available to members of the public who may request them. In all cases not provided for by rule, the bankruptcy court may regulate its practice in any manner not inconsistent with these rules.

ADVISORY COMMITTEE NOTE

This rule is an adaptation of Rule 83 F. R. Civ. P. and Rule 57(a) F. R. Crim. P. Under this rule bankruptcy courts may make local rules which govern practice before those courts. Circuit councils and district courts are authorized by Rule 8018 to make local rules governing appellate practice.

Rule 9030. Jurisdiction and Venue Unaffected

These rules shall not be construed to extend or limit the jurisdiction of the bankruptcy courts or the venue of any matters therein.

ADVISORY COMMITTEE NOTE

The rule is an adaptation of Rule 82 F. R. Civ. P.

Rule 9031. Masters Not Authorized

Rule 53 F. R. Civ. P. does not apply in cases under the Code.

ADVISORY COMMITTEE NOTE

This rule precludes the appointment of masters in cases and proceedings under the Code.

Rule 9032. Effect of Amendment of Federal Rules of Civil Procedure

The Federal Rules of Civil Procedure which are incorporated by reference and made applicable by these rules shall be the Federal Rules of Civil Procedure in effect on the effective date of these rules and as thereafter amended, unless otherwise provided by such amendment.

PART X

UNITED STATES TRUSTEES

Rule X-1001. Applicability of Rules

(a) PART X RULES. The rules in Part X apply to cases under the Code filed in or transferred to any district in which a United States trustee is authorized.

(b) INAPPLICABILITY OF RULES. The following rules do not apply in cases under the Code filed in or transferred to any district specified in subdivision (a) of this rule: 2001(a), (c), 2002(a)(1), 2003(a),(b)(1), (2),(d), 2007, 2008, 2009(c), (d), (e), 2010(a), 5008, and the second sentence of 6003.

ADVISORY COMMITTEE NOTE

Section 1501 of the Code lists the following judicial or "pilot" districts in which United States trustees are to be appointed by the Attorney General pursuant to 28 U.S.C. § 581: Northern District of Alabama, Central District of California, Districts of Colorado, District of Columbia, Delaware, Northern District of Illinois, Districts of Kansas, Maine, Massachusetts, Minnesota, New Hampshire, New Jersey, Southern District of New York, Districts of North Dakota, Rhode Island, South Dakota, Northern District of Texas, and Eastern District of Virginia.

These Part X rules are for use in those districts in connection with the duties and responsibilities of the United States trustees. They are set out separately to facilitate their repeal in the event the United States trustee system is not continued by Congress beyond March 31, 1984. See Pub. L. 95-598, § 408(c).

Subdivision (b) indicates the rules that are not applicable in the pilot districts. Following is a list of the rules in Part X and the rules which they affect, in addition to those listed in Rule X-1001:

Rules in Part X	Rules in Parts I through IX affected by rules in Part X
X-1002	1007(d)
X-1002(a)	1007(a)
X-1002(b)	1007(a)(4)
	1002(b)
	1003(b)
	1007(f)
X-1003(a)	2001(a)
X-1003(b)	2001(c)
X-1004	2008
	2009(e)
	2013(a)
X-1005	2009(e)
X-1005(a)	2009(c)
X-1006	2007(as to chapter 11)
X-1006(a)	2003(a)
X-1006(b)(1)	2003(b)(1)
X-1006(b)(2)	2003(b)(2)
X-1006(c)	2003(d)
X-1007(a)	2015(a)(1)
X-1007(b)	4002
X-1008	2002(a),(b)
X-1008(a)	2002(a)(2),(5),(7), (f)

Cross references to rules affected by rules in Part X (in addition to those listed in Rule X-1001)

Rule affected	Rules in Part X
1002(b)	X-1002(b)
1003(b)	X-1002(b)
1007(a)(4)	X-1002(b)
1007(a)	X-1002(a)
1007(d)	X-1002
2002(a)	X-1008
2002(a)(2)	X-1008(a)

	X-1008(a)
2002(a)(5)	X-1008(a)
2002(a)(7)	X-1008(a)
2002(b)	X-1008(a)
2002(f)	
	X-1007(a)
2015(a)(1)	

Rule X-1002. Petitions, Lists, Schedules and Statements

(a) PETITIONS AND ACCOMPANYING MATERIALS.

(1) Number of Copies. In addition to the number of copies required to be filed pursuant to Rules 1002(b), 1003(b) and 1007(f), there shall be filed one copy of the petition, the list of creditors, the schedule of assets and liabilities, the statement of financial affairs, the statement of executory contracts, and the Chapter 13 Statement and any amendments thereto.

(2) Transmission to United States Trustee. The clerk shall forthwith transmit to the United States trustee the additional copies filed pursuant to this subdivision. Written notice of a hearing for an extension of time to file schedules, statements and lists pursuant to Rule 1007(a)(4) shall be given the United States trustee.

(b) FILING LISTS BY DEBTOR IN CHAPTER 11 REORGANIZATION CASES. In chapter 11 cases, the debtor shall file an additional copy of the lists of creditors and of the 20 largest unsecured creditors

required by Rule 1007(a) and (d). The lists shall contain additional information as the United States trustee may require and one copy of each shall be transmitted forthwith by the clerk to the United States trustee.

ADVISORY COMMITTEE NOTE

Rule X-1002 requires that a copy of the petition commencing a case under the Code, whether it is a case under chapter 7, 9, 11, or 13, be sent to the United States trustee. This supplements Rules 1002(b) and 1003(b). Sections 301-303 of the Code provide that petitions are to be filed with the bankruptcy court. Nevertheless, the United States trustee should be apprised of the commencement of every case and this is most easily accomplished by providing that office with a copy of the petition.

The clerk also must transmit a copy of the lists of creditors and any schedules and statements that are filed. Rule 1007(d) requires a list of the 20 largest creditors and a list of all creditors to be filed. These lists should be transmitted to the United States trustee.

The clerk should transmit the papers specified in this rule forthwith on their filing because the United States trustee requires the information to perform certain duties, e.g., appointment of an interim trustee, § 15701 of the Code, and appointment of a committee of unsecured creditors, § 151102.

Lists of the largest creditors have frequently been deficient, and have hampered the United States trustee in appointing a creditors' committee. Subdivision (b) of this rule provides the United States trustee with authority to require sufficient information to assemble a creditors' committee that complies with § 1102(b) of the Code.

Rule X-1003. Appointment of Interim Trustee before Order for Relief in a Chapter 7 Liquidation Case

(a) APPOINTMENT. At any time following the commencement of an involuntary liquidation case and before an order for relief, the court on written motion of a party in interest may order the appointment of an interim trustee under § 15303 of the Code. The motion shall set forth the necessity for the appointment and may be granted only after hearing on notice to the debtor, the United States trustee, and other parties in interest as the court may designate.

(b) FORM OF ORDER. The order directing the appointment of an interim trustee shall state why the appointment is necessary and shall specify the trustee's duties.

ADVISORY COMMITTEE NOTE

This rule parallels Rule 2001(a) with minor adjustments to reflect that in a United States trustee district, it is the United States trustee, rather than the court, who appoints interim trustees.

Rule X-1004. Notification to Trustee of Selection; Blanket Bond

(a) NOTIFICATION. The United States trustee shall immediately notify the trustee of his selection, how he may qualify, and, if applicable, the amount of the bond. The trustee shall give written notification to the court and the

United States trustee of the acceptance or rejection of the office within five days after receipt of notice of selection.

(b) BLANKET BOND. The United States trustee may authorize a blanket bond in favor of the United States conditioned on the faithful performance of official duties by the trustee or trustees to cover (1) a person who qualifies as trustee in a number of cases, and (2) a number of trustees each of whom qualifies in a different case.

ADVISORY COMMITTEE NOTE

This rule parallels Rules 2008 and 2010, except for adjustments to reflect that in a United States trustee district, it is the United States trustee, rather than the court, who appoints interim trustees and sets the bond.

If a person selected as trustee accepts the office, he should also qualify within five days after the selection as required by § 322(a). A standing trustee appointed for chapter 13 cases may notify the court and the United States trustee of the acceptance of office in advance of the commencement of individual cases.

No bond is required if the United States trustee personally serves as trustee in a case; see § 15322(a).

Rule X-1005. Trustees for Estates When Joint Administration Ordered

(a) APPOINTMENT OF TRUSTEES FOR ESTATES BEING JOINTLY ADMINISTERED.

(1) Chapter 7 Liquidation Cases. The United States trustee may appoint one or more interim trustees for estates being jointly administered in chapter 7 cases.

(2) Chapter 11 Reorganization Cases. If a trustee is ordered, the United States trustee may appoint one or more trustees for estates being jointly administered in chapter 11 cases.

(3) Chapter 13 Individual's Debt Adjustment Cases. The United States trustee may appoint one or more trustees for estates being jointly administered in chapter 13 cases.

(b) POTENTIAL CONFLICTS OF INTEREST. On a showing that creditors of the different estates will be prejudiced by conflicts of interest of a common trustee the court shall order the appointment of separate trustees for estates being jointly administered.

ADVISORY COMMITTEE NOTE

This rule parallels Rule 2009(c) and (d), and differs only in that it makes clear that the United States trustee, rather than the court, has the responsibility for appointing trustees. See §§ 15701, 151104, 151302 of the Code and 28 U.S.C. § 586(b).

If separate trustees are ordered pursuant to subdivision (b), separate and successor trustees should be chosen as prescribed by § 703 of the Code. If the occasion for another election arises, the United States trustee should call a meeting of creditors for this purpose.

Rule 2009(e) is not applicable in pilot districts as a direct restriction on the United States trustee because the exercise of discretion by the executive branch is not subject to advance restriction by rule of court or otherwise. United States v. Cox, 342 F.2d 167 (5th Cir. 1965), cert. denied, 365 U.S. 863 (1965); United States v. Frumento, 409 F. Supp. 136, 141 (E. D. Pa.), aff'd, 563 F.2d

1083 (3d Cir. 1977), cert. denied, 434 U.S. 1072 (1977); accord, Smith v. United States, 375 F.2d 243 (5th Cir. 1967); House Report No. 95-595, 95th Cong., 1st Sess. 110 (1977). Any appointment of a trustee by a United States trustee in a case under chapter 11 may be disapproved by the court for cause; see § 151104(c).

Rule X-1006. Meetings of Creditors or Equity Security Holders

(a) DATE AND PLACE. The United States trustee shall call a meeting of creditors to be held not less than 20 nor more than 40 days after the order for relief. If there is an appeal from or a motion to vacate the order for relief, or if there is a motion to dismiss the case, the United States trustee may set a later time for the meeting. The meeting may be held at a regular place for holding court or at any other place designated by the United States trustee within the district convenient for the parties in interest.

(b) ORDER OF MEETING.

(1) Meeting of Creditors. The United States trustee or his designee shall preside at the meeting of creditors. The business of the meeting shall include the examination of the debtor under oath and, in a chapter 7 liquidation case, may include the election of a trustee or of a creditors' committee. The presiding officer shall have the authority to administer oaths.

(2) Meeting of Equity Security Holders. If the court orders a meeting of equity security holders pursuant to § 341(b) of the Code, the United States trustee shall fix a date for the meeting and he or his designee shall preside.

(c) REPORT TO THE COURT. The United States trustee shall transmit to the court the name and address of any person elected trustee or a member of a creditors' committee. If an election is disputed, the presiding officer shall promptly inform the court in writing of the dispute. Pending disposition of the dispute by the court, the interim trustee shall continue in office. If no motion for the resolution of the election dispute is made to the court within ten days after the date of the creditors' meeting, the interim trustee shall serve as trustee in the case.

(d) SPECIAL MEETINGS. The United States trustee may call a special meeting of creditors on application or on his own initiative.

(e) FINAL MEETING. If the United States trustee calls a final meeting of creditors in a case in which the net proceeds realized exceed $250, the clerk of the bankruptcy court shall mail a summary of the trustee's final account to the creditors with the notice of the meeting, together with a statement of the amount of the claims allowed. The trustee

or his designee shall attend the final meeting and shall, if requested, report on the administration of the estate.

ADVISORY COMMITTEE NOTE

This rule imposes on the United States trustee the duty to fix the date for the meeting of creditors required by § 341(a) of the Code and the meeting of equity security holders if one is ordered by the court. Although the United States trustee fixes the date of the meeting, a duty that is parallel to that imposed on the court by Rule 2003(a), the clerk of the bankruptcy court transmits the notice of the meeting unless the court orders otherwise, as prescribed by Rule 2002(a)(1). As indicated in Rule X-1006, there is flexibility with regard to the location of the meeting.

Pursuant to §§ 702 and 705 of the Code, creditors may elect a trustee and a committee in a chapter 7 case. Subdivision (b) of this rule provides that the United States trustee or his designee will preside over any election that is held under those sections. While Rule X-1006 is applicable to cases under chapter 11 and chapter 13, trustees and committees are not elected in these cases.

Subdivision (c) recognizes that the court should be informed immediately about the election or nonelection of a trustee in a chapter 7 case. This subdivision also notes that there may be a disputed election, but in no event may the United States trustee or his designee resolve the dispute. For purposes of expediency, the results of the election could be obtained for each alternative presented by the dispute and reported to the court. Thus, when an interested party (not the United States trustee) moves for resolution of the dispute, the court will determine the issue and another meeting to conduct the election may not be necessary.

Rule X-1007. Duty of Trustee or Debtor in Possession to Make Reports, Furnish Information, and Cooperate with United States Trustee

(a) DUTY TO FILE INVENTORY. A trustee or debtor in possession shall file the inventory required by Rule 2015(a)(1) with the United States trustee and with the court if the court so directs.

(b) DUTY TO FURNISH INFORMATION TO, AND COOPERATE WITH, UNITED STATES TRUSTEE. The trustee or debtor in possession shall cooperate with the United States trustee by furnishing such information as the United States trustee may reasonably require in supervising the administration of the estate. The trustee or debtor in possession in a chapter 11 reorganization case, and the debtor in a chapter 13 individual's debt adjustment case when the debtor is engaged in business, shall furnish the United States trustee and file with the clerk regular reports of operations as the United States trustee may reasonably require.

ADVISORY COMMITTEE NOTE

Subdivision (a) supplements Rule 2015(a) and the legislative direction that the administration of cases is under the supervision of the United States trustee. 28 U.S.C. § 586(a)(3). Thus, in the absence of a contest, the court should not become involved in receiving or reviewing interim reports of the assets of a debtor, except under the limited circumstances set forth in § 704(7) of the Code.

The United States trustee is charged with the supervision of the administration of all cases under chapters 7, 11 and 13. 28 U.S.C. § 586(a), and chapter 15 of the Code. Subdivision (b), which is based in part on Rule 4002, makes clear the duties of the parties to assist the United States trustee in performing that function. The timely filing of reports of operations is crucial to the efficient administration of chapter 11 and business chapter 13 cases. Under the former Bankruptcy Act, these reports were regularly filed with the bankruptcy judges, but since the United States trustees unlike courts cannot enter orders, this rule enables the United States trustee to superintend the activities of trustees and debtors in possession.

Rule X-1008. Notices to United States Trustee

(a) NOTICES TO BE FURNISHED TO UNITED STATES TRUSTEES. Unless the United States trustee otherwise requests, the United States trustee shall receive notice of and pleadings relating to:

(1) the matters described in Rule 2002(a)(2), (5), (7), 2002(b), and (f);

(2) applications for approval of the employment of professional persons under Rule 2014;

(3) applications for compensation of professional persons under Rule 2016;

(4) the hearing to consider a disclosure statement pursuant to Rule 3017;

(5) the hearing on the appointment of a trustee or examiner; and

(6) any other matter notice of which is requested by the United States trustee or ordered by the court.

(b) TIME FOR NOTICE TO UNITED STATES TRUSTEE. Subject to Rule 2002, the United States trustee shall receive notice within sufficient time to permit him to participate in the matter.

(c) UNITED STATES TRUSTEE NEED NOT FURNISH NOTICE. The United States trustee shall not be required to give any notice provided for in Rule 2002(a) or (b).

ADVISORY COMMITTEE NOTE

This rule supplements Rule 2002 and provides for notice to the United States trustee of those matters within his responsibility. The rule omits those notices described in Rule 2002(a)(1) because a meeting of creditors may be convened only by the United States trustee. Rule X-1008 also omits the notice described in Rule 2002(a)(3) (compromise of controversies), 2002(a)(4) (claims against a surplus), and 2002(a)(6) (acceptance or rejection of proposed modifications of a plan in a case under chapter 11), because these do not relate to matters that generally involve the United States trustee. When the facts are such that the United States trustee should be able to monitor those aspects of a case, the rule provides that the United States trustee may request notices. Similarly, this rule permits a United States trustee in a particular judicial district to request notices in certain categories, or request not to receive notices in other categories when the practice in that district makes that desirable.

Rule X-1009. Right to be Heard; Filing Papers

(a) RIGHT TO BE HEARD. The United States trustee may raise and appear and be heard on any issue relating to his responsibilities in a case under the Code.

(b) FILING OF PAPERS. In the interest of effective administration, the court or the United States trustee may require a party in interest to file with the United States trustee a copy of any paper filed with the court.

ADVISORY COMMITTEE NOTE

Subdivision (a) gives the United States trustee standing to be heard. He should have the opportunity, for example, to object to or support actions proposed to be taken by a chapter 7 trustee. Similarly, he should have the opportunity to move to convert or dismiss a chapter 11 case if the operation of the business or management of the property precludes effective administration of

the case under that chapter. This rule does not attempt to expand the authority of the United States trustee to move to convert or dismiss a case under § 1112(b), and leaves the interpretation of that provision to the courts. Subdivision (a) gives effect to the Congressional intent that the United States trustee shall have an active role in cases under the Code.

Subdivision (b) enables the United States trustee to be informed of all developments in a case. It supplements the provisions of Rule X-1008 which requires certain notices and pleadings to be sent to the United States trustee.

Rule X-1010. Prohibition of Ex Parte Contacts

The United States trustee, his assistants, and agents shall refrain from ex parte meetings and communications with the bankruptcy judge concerning matters affecting a particular case or proceeding. This rule does not preclude communication with a bankruptcy judge to discuss general problems of administration and improvement of bankruptcy administration, including the operation of the United States trustee system.

ADVISORY COMMITTEE NOTE

This rule and Rule 9003 do not supersede or limit any applicable canon of professional responsibility or judicial conduct. See Advisory Committee Note to Rule 9003.

Communication between the judicial and administrative systems is expressly not prohibited. It may be desirable that the court and the United States trustee cooperatively seek ways to improve the administration of cases under the Code.

OFFICIAL FORMS

[NOTE: These official forms should be observed and used with such alterations as may be appropriate to suit the circumstances. See Rule 9009.]

Form 1.—Voluntary Petition

UNITED STATES BANKRUPTCY COURT FOR THE
..... DISTRICT OF .....

In re	:	
.....,	:	
Debtor [set forth here all names including trade names used by Debtor within last 6 years]. Social Security No. ..... and Debtor's Employer's Tax Identification No.	:	Case No. .....

Voluntary Petition

1. Petitioner's mailing address, including county, is .....
.....

2. Petitioner has resided [or has had his domicile or has had his principal place of business or has had his principal assets] within this district for the preceding 180 days [or for a longer portion of the preceding 180 days than in any other district].

3. Petitioner is qualified to file this petition and is entitled to the benefits of title 11, United States Code as a voluntary debtor.

4. [If appropriate] A copy of petitioner's proposed plan, dated ....., is attached [or Petitioner intends to file a plan pursuant to chapter 11 or chapter 13] of title 11, United States Code.

5. [If petitioner is a corporation] Exhibit "A" is attached to and made part of this petition.

WHEREFORE, petitioner prays for relief in accordance with chapter 7 [or chapter 11 or chapter 13] of title 11, United States Code.

Signed: .....
Attorney for Petitioner.

Address: .....
.....

[Petitioner signs if not represented by attorney.]

.....
Petitioner.

I, ..., the petitioner named in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct.

Executed on .....

Signature: .....
Petitioner.

Exhibit "A"

[If petitioner is a corporation, this Exhibit "A" shall be completed and attached to the petition pursuant to paragraph 5 thereof.]

[Caption as in Form No. 1]

FOR COURT USE ONLY

.....
Date Petition Filed

.....
Case Number

.....
Bankruptcy Judge

1. Petitioner's employer identification number is .....

2. If any of petitioner's securities are registered under section 12 of the Securities and Exchange Act of 1934, SEC file number is .....

3. The following financial data is the latest available information and refers to petitioner's condition on .....

a. Total assets: $.....

b. Total liabilities: $.....

		Approximate number of holders
Secured debt, excluding that listed below	$.....	.....
Debt securities held by more than 100 holders	$.....	.....
Secured	$.....	.....
Unsecured	$.....	.....
Other liabilities, excluding contingent or unliquidated claims	$.....	.....
Number of shares of common stock	$.....	.....

Comments, if any: .....

.....

.....

4. Brief description of petitioner's business: .....

.....

.....

5. [If presently available, supply the following information] The name of any person who directly or indirectly owns, controls, or holds, with power to vote, 20% or more of the voting securities of petitioner is .....

.....

6. [If presently available, supply the following information] The names of all corporations 20% or more of the outstanding voting securities of which are directly or indirectly owned, controlled, or held, with power to vote, by petitioner are .....

.....

.....

ADVISORY COMMITTEE NOTE

This form may be used to commence a voluntary case under chapter 7, 11, or 13 of the Bankruptcy Code. A chapter 9 petition requires other allegations (see § 109(c) of the Code) but this form may be adapted for such use.

The title of the case, in the caption of the form, should include all names used by the debtor, such as trade names, names used in doing business, married names and maiden names. This will enable creditors to properly identify the debtor when they receive notices and orders.

A joint petition, available for an individual and spouse, may be filed under chapter 7, 11, or 13. See § 302 of the Code. This form may be adapted for such use.

The unsworn declaration at the end of the petition conforms with 28 U.S.C. § 1746 (1976) which permits the declaration to be made in the manner indicated with the same force and effect as a sworn statement. The form may be adapted for use outside of the United States by adding the words "under the laws of the United States" after the word "perjury.

"Exhibit "A" to be attached to the petition of a corporate debtor is for the purpose of supplying the Securities and Exchange Commission with the information it requires at the beginning stages of a chapter 11 case.

FORM 2.--Application to Pay Filing Fee in Installments

UNITED STATES BANKRUPTCY COURT FOR THE
..... DISTRICT OF .....

In re .....,
Debtor. Case No. .....

Application to Pay Filing Fee in Installments

1. Applicant files herewith a petition commencing a voluntary [or joint] case under title 11, United States Code.

2. Applicant is unable to pay the filing fee except in installments.

3. Applicant proposes to pay such fee to the clerk of the bankruptcy court on the following terms: .....
.....

4. Applicant has not paid any money or transferred any property to applicant's attorney for services in connection with this case or any pending case under title 11, United States Code, and applicant will not make any payment or transfer any property to his attorney for such services until the filing fee is paid in full.

WHEREFORE, applicant prays that he be permitted to pay the filing fee in installments.

Dated: .....

Signed: .....,
Applicant.

Address: .....,
.....

ADVISORY COMMITTEE NOTE

The application for permission to pay filing fees in installments may be filed in accordance with 28 U.S.C. § 1930(a), and Rule 1006. Only an individual debtor in a voluntary case, or individual debtors filing a joint petition may pay the fee in installments.

If a joint petition is filed, this form may be adapted for use by both petitioners.

FORM 3.—Order for Payment of Filing Fee in Installments

[Caption as in Form No. 2]

Order for Payment of Filing Fee in Installments

The debtor having applied for permission to pay the filing fee in this case in installments:

It is ordered that the debtor pay the filing fee still owing, namely, $ . . . . . , as follows: . . . . . .

. . . . . .

. . . . . .

It is further ordered that all payments be made at the office of the clerk of the United States Bankruptcy Court located at . . . . . , and that until the filing fee is paid in full, the debtor shall not pay any money or transfer any property to his attorney, and his attorney shall not accept any money or property from the debtor for services in connection with this case.

Dated: . . . . . .

BY THE COURT

. . . . . ,
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

Issuance of an order permitting payment of the filing fees in installments is governed by Rule 1006.

This form may be adapted for use in a joint case when both petitioners apply to pay the filing fee in installments.

FORM 4.--Unsworn Declaration under Penalty of Perjury on Behalf of a Corporation or Partnership

I, ... , [the president or other officer or an authorized agent of the corporation] [or a member or an authorized agent of the partnership] named as petitioner in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct, and that the filing of this petition on behalf of the [corporation] [or partnership] has been authorized.

Executed on . . . . . .

Signature: . . . . . .

ADVISORY COMMITTEE NOTE

Rule 1008 requires all petitions to be verified. This form is to be used on behalf of a corporation or partnership. It may be adapted for use in connection with other papers required by these rules to be verified. See the Note to Rule 9011. 28 U.S.C. § 1746 permits an unsworn declaration to be used in lieu of a verification. See Advisory Committee Note to Form No. 1.

FORM 5.—Certificate of Commencement of Case

[Caption as in Form No. 1]

Certificate of Commencement of Case

I hereby certify that on . . . . . , ... the above named debtor filed a petition [or if applicable a petition was filed against the above named debtor] requesting relief under chapter . . of title 11, United States Code (the Bankruptcy Code).

Dated: . . . . . .

. . . . . .

Clerk of the Bankruptcy Court.

ADVISORY COMMITTEE NOTE

This form is adapted from certificates that have been in use in several districts. The certificate may be used to alert persons dealing with the debtor or property of the debtor of the pendency of a case under the Code before the notice of the meeting of creditors is sent.

FORM 6.—Schedules of Assets and Liabilities

[Caption as in Form No. 1]

Schedule A. — Statement of All Liabilities of Debtor.

Schedules A-1, A-2 and A-3 must include all the claims against the debtor or his property as of the date of the filing of the petition by or against him.

Schedule A-1. — Creditors having priority.

(1) Nature of claim	(2) Name of creditor and complete mailing address including zip code	(3) Specify when claim was incurred and the consideration therefor; when claim is subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	(4) Indicate if claim is contingent, unliquidated, or disputed	(5) Amount of claim

a. Wages, salary, and commissions, including vacation, severance and sick leave pay owing to employees not exceeding $2,000 to each, earned within 90 days before filing of petition or cessation of business (if earlier specify date). $.....

b. Contributions to employee benefit plans for services rendered within 180 days before filing of petition or cessation of business (if earlier specify date). $.....

c. Deposits by individuals, not exceeding $900 for each for purchase, lease, or rental of property or services for personal, family, or household use that were not delivered or provided. $.....

d. Taxes owing [itemize by type of tax and taxing authority]

(1) To the United States $.....
(2) To any state $.....
(3) To any other taxing authority $.....

Total ..... $.....

Schedule A-2. — Creditors holding security

(1) Name of creditor and complete mailing address including zip code	(2) Description of security and date when obtained by creditor	(3) Specify when claim was incurred and the consideration therefor; when claim is subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	(4) Indicate if claim is contingent, unliquidated, or disputed	(5) Market Value	(6) Amount of claim without deduction of value of security
		Total			$.....

Schedule A-3. — Creditors having unsecured claims without priority.

(1) Name of creditor [including last known holder of any negotiable instrument] and complete mailing address including zip code	(2) Specify when claim was incurred and the consideration therefor; when claim is contingent, unliquidated, disputed, subject to setoff, evidenced by a judgment, negotiable instrument, or other writing, or incurred as partner or joint contractor, so indicate; specify name of any partner or joint contractor on any debt	(3) Indicate if claim is contingent, unliquidated, or disputed	(4) Amount of claim
		Total	$.....

OFFICIAL FORMS 11

Schedule B — Statement of All Property of Debtor

Schedules B-1, B-2, B-3, and B-4 must include all property of the debtor as of the date of the filing of the petition by or against him.

Schedule B-1. — Real Property

Description and location of all real property in which debtor has an interest [including equitable and future interests, interests in estates by the entirety, community property, life estates, leaseholds, and rights and powers exercisable for his own benefit]	Nature of interest [specify all deeds and written instruments relating thereto]	Market value of debtor's interest without deduction for secured claims listed in Schedule A-2 or exemptions claimed in Schedule B-4
	Total	$.....

Schedule B-2. — Personal Property

Type of Property	Description and Location	Market value of debtor's interest without deduction for secured claims listed on Schedule A-2 or exemptions claimed in Schedule B-4
	Total	$.....

a.	Cash on hand	$.....
b.	Deposits of money with banking institutions, savings and loan associations, brokerage houses, credit unions, public utility companies, landlords and others	.....
c.	Household goods, supplies and furnishings	.....
d.	Books, pictures, and other art objects; stamp, coin and other collections	.....

e. Wearing apparel, jewelry, firearms, sports equipment and other personal possessions .....

f. Automobiles, trucks, trailers and other vehicles .....

g. Boats, motors and their accessories .....

h. Livestock, poultry and other animals .....

i. Farming equipment, supplies and implements .....

j. Office equipment, furnishings and supplies .....

k. Machinery, fixtures, equipment and supplies [other than those listed in Items j and l] used in business .....

l. Inventory .....

m. Tangible personal property of any other description .....

n. Patents, copyrights, licenses, franchises and other general intangibles [specify all documents and writings relating thereto] .....

o. Government and corporate bonds and other negotiable and nonnegotiable instruments .....

p. Other liquidated debts owing debtor .....

q. Contingent and unliquidated claims of every nature, including counterclaims of the debtor [give estimated value of each] .....

r. Interests in insurance policies [name insurance company of each policy and itemize surrender or refund value of each] .....

s. Annuities [itemize and name each issuer] .....

t. Stock and interests in incorporated and unincorporated companies [itemize separately] .....

u. Interests in partnerships .....

v. Equitable and future interests, life estates, and rights or powers exercisable for the benefit of the debtor (other than those listed in schedule B-1) [specify all written instruments relating thereto] .....

Total $.....

Schedule B-3. — Property not otherwise scheduled

Type of Property	Description and Location	Market value of debtor's interest without deduction for secured claims listed in Schedule A-2 or exemption claimed in Schedule B-4
a. Property transferred under assignment for benefit of creditors, within 120 days prior to filing of petition [specify date of assignment, name and address of assignee, amount realized therefrom by the assignee, and disposition of proceeds so far as known to debtor]		$.....
b. Property of any kind not otherwise scheduled		.....
	Total	$.....

Debtor selects the following property as exempt pursuant to 11 U.S.C. § 522(d) [or the laws of the State of .....]

best copy available

Schedule B-4. — Property claimed as exempt

Type of Property	Location, description, and, so far as relevant to the claim of exemption, present use of property	Specify statute creating the exemption	Value claimed exempt
			$.....
			.....
		Total	$.....

Summary of debts and property.
[From the statements of the debtor in Schedules A and B]

Schedule		Total
	Debts	
A-1/a,b	Wages, etc. having priority	$.....
A-1(c)	Deposits of money	.....
A-1/d(1)	Taxes owing United States	.....
A-1/d(2)	Taxes owing states	.....
A-1/d(3)	Taxes owing other taxing authorities	.....
A-2	Secured claims	.....
A-3	Unsecured claims without priority	.....
	Schedule A total	$.....
	Property	
B-1	Real property [total value]	$.....
B-2/a	Cash on hand	.....
B-2/b	Deposits	.....
B-2/c	Household goods	.....
B-2/d	Books, pictures, and collections	.....
B-2/e	Wearing apparel and personal possessions	.....
B-2/f	Automobiles and other vehicles	.....
B-2/g	Boats, motors, and accessories	.....
B-2/h	Livestock and other animals	.....
B-2/i	Farming supplies and implements	.....
B-2/j	Office equipment and supplies	.....
B-2/k	Machinery, equipment, and supplies used in business	.....
B-2/l	Inventory	.....

B-2/m	Other tangible personal property	.....
B-2/n	Patents and other general intangibles	.....
B-2/o	Bonds and other instruments	.....
B-2/p	Other liquidated debts	.....
B-2/q	Contingent and unliquidated claims	.....
B-2/r	Interests in insurance policies	.....
B-2/s	Annuities	.....
B-2/t	Interests in corporations and unincorporated companies	.....
B-2/u	Interests in partnerships	.....
B-2/v	Equitable and future interests, rights, and powers in personalty	.....
B-3/a	Property assigned for benefit of creditors	.....
B-3/b	Property not otherwise scheduled	.....
	Schedule B total	$.....

Unsworn Declaration under Penalty of Perjury of Individual to Schedules A and B

I, ..., declare under penalty of perjury that I have read the foregoing schedule, consisting of . . . sheets, and that they are true and correct to the best of my knowledge, information and belief.

Executed on .....

Signature: .....

Unsworn Declaration under Penalty of Perjury
on Behalf of Corporation or Partnership
to Schedules A and B

I, ... , [the president or other officer or an authorized agent of the corporation] [or a member or an authorized agent of the partnership] named as debtor in this case, declare under penalty of perjury that I have read the foregoing schedules, consisting of . . . sheets, and that they are true and correct to the best of my knowledge, information, and belief.

Executed on . . . . . .

Signature: . . . . . .

ADVISORY COMMITTEE NOTE

These schedules may be used pursuant to § 521(1) of the Code.

The unsworn declarations at the end of the form are in conformity with 28 U.S.C. § 1746. See Advisory Committee Note to Form No. 1

FORM 7.—Statement of Financial Affairs for Debtor
Not Engaged in Business

[Caption as in Form No. 1]

Statement of Financial Affairs for Debtor
Not Engaged in Business

[Each question shall be answered or the failure to answer explained. If the answer is "none" or "not applicable" so state. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term, "original petition," used in the following questions, shall mean the petition filed under Rule 1002, 1003, or 1004.]

1. Name and residence.

a. What is your full name?

b. Have you used, or been known by, any other names within the six years immediately preceding the filing of the original petition herein? (If so, give particulars.)

c. Where do you now reside?

d. Where else have you resided during the six years immediately preceding the filing of the original petition herein?

2. Occupation and income.

a. What is your occupation?

b. Where are you now employed? (Give the name and address of your employer, or the address at which you carry on your trade or profession, and the length of time you have been so employed or engaged.)

c. Have you been in a partnership with anyone, or engaged in any business during the six years immediately preceding the filing of the original petition herein? (If so, give particulars, including names, dates, and places.)

d. What amount of income have you received from your trade or profession during each of the two calendar years immediately preceding the filing of the original petition herein?

e. What amount of income have you received from other sources during each of these two years? (Give particulars, including each source, and the amount received therefrom.)

3. Tax returns and refunds.

a. Where did you file your federal, state and municipal income tax returns for the two years immediately preceding the filing of the original petition herein?

b. What tax refunds (income and other) have you received during the year immediately preceding the filing of the original petition herein?

c. To what tax refunds (income or other), if any, are you, or may you be, entitled? (Give particulars, including information as to any refund payable jointly to you and your spouse or any other person.)

4. Financial accounts, certificates of deposit and safe deposit boxes.

a. What accounts or certificates of deposit or shares in banks, savings and loan, thrift, building and loan and homestead associations, credit unions, brokerage houses, pension funds and the like have you maintained, alone or together with any other person, and in your own or any other name within the two years immediately preceding the filing of the original petition herein? (Give the name and address of each institution, the name and number under which the account or certificate is maintained, and the name and address of every other person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash, or other valuables within the two years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name and address of every other person who had the right of access thereto, a brief

description of the contents thereof, and, if the box has been surrendered, state when surrendered, or, if transferred, when transferred, and the name and address of the transferee.)

5. Books and records.

a. Have you kept books of account or records relating to your affairs within the two years immediately preceding the filing of the original petition herein?

b. In whose possession are these books or records? (Give names and addresses.)

c. If any of these books or records are not available, explain.

d. Have any books of account or records relating to your affairs been destroyed, lost, or otherwise disposed of within the two years immediately preceding the filing of the original petition herein? (If so, give particulars, including date of destruction, loss, or disposition, and reason therefor.)

6. Property held for another person.

What property do you hold for any other person? (Give name and address of each person, and describe the property, or value thereof, and all writings relating thereto.)

7. Property held by another.

Is any other person holding anything of value in which you have an interest? (Give name and address, location and description of the property, and circumstances of the holding.)

8. Prior bankruptcy.

What cases under the Bankruptcy Act or title 11, United States Code have previously been brought by or against you? (State the location of the bankruptcy court, the nature and number of each case, the date when it was filed, and whether a discharge was granted or denied, the case was dismissed, or a composition, arrangement, or plan was confirmed.)

9. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent? (If so, give a brief description of the property, the name and address of the receiver, trustee, or other agent, and, if the agent was appointed in a court proceeding, the name and location of the court, the title and number of the case, and the nature thereof.)

b. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within one year immediately preceding the filing of the original petition herein? (If so, give dates, the name and address of the assignee, and a brief statement of the terms of assignment or settlement.)

10. Suits, executions, and attachments.

a. Were you a party to any suit pending at the time of the filing of the original petition herein? (If so, give the name and location of the court and the title and nature of the proceeding.)

b. Were you a party to any suit terminated within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the year immediately preceding the filing of the original petition herein? (If so, describe the property seized or person garnished, and at whose suit.)

11. (a) Payment of loans, installment purchases and other debts.

What payments in whole or in part have you made during the year immediately preceding the filing of the original petition herein on any of the following: (1) loans; (2) installment purchases of goods and services; and (3) other debts? (Give the names and addresses of the persons receiving payment, the amounts of the loans or other debts and the purchase price of the goods and services, the dates of the original transactions, the amounts and dates of payments and, if any of the payees are your relatives or insiders, the relationship; if the debtor is a partnership and any of the payees is or was a partner or a relative of a partner, state the relationship; if the debtor is a corporation and any of the payees is or was an officer, director, or stockholder, or a relative of an officer, director, or stockholder, state the relationship.)

(b) Setoffs.

What debts have you owed to any creditor, including any bank, which were setoff by that creditor against a debt or deposit owing by the creditor to you during the year immediately preceding the filing of the original petition herein? (Give the names and addresses of the persons setting off such debts, the dates of the setoffs, the amounts of the debts owing by you and to you and, if any of the creditors are your relatives or insiders, the relationship.)

12. Transfers of property.

a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description, and value of gifts.)

b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition, of real or personal property during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative or insider, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

13. Repossessions and returns.

Has any property been returned to, or repossessed by, the seller or by a secured party during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party getting the property and its description and value.)

14. Losses.

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding or since the filing of the original petition herein? (If so, give particulars, including dates, names, and places, and the amounts of money or value and general description of property lost.)

b. Was the loss covered in whole or part by insurance? (If so, give particulars.)

15. Payments or transfers to attorneys.

a. Have you consulted an attorney during the year immediately preceding or since the filing of the original petition herein? (Give dates, name and address.)

b. Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney or to any other person on his behalf? (If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

c. Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf? (If so, give particulars, including amount and terms of obligation.)

I, ... , declare under penalty of perjury that I have read the answers contained in the foregoing statement of financial affairs and that they are true and correct to the best of my knowledge, information, and belief.

Executed on . . . . . .

. . . . . ,
Debtor.

ADVISORY COMMITTEE NOTE

See Advisory Committee Note to Form No. 1 for discussion of unsworn statement at the end of this form.

FORM 8.—Statement of Financial Affairs for Debtor Engaged in Business.

[Caption as in Form No. 1]

Statement of Financial Affairs for Debtor Engaged in Business

[Each question shall be answered or the failure to answer explained. If the answer is "none" or "not applicable," so state. If additional space is needed for the answer to any question, a separate sheet properly identified and made a part hereof, should be used and attached.

If the debtor is a partnership or a corporation, the questions shall be deemed to be addressed to, and shall be answered on behalf of, the partnership or corporation; and the statement shall be certified by a member of the partnership or by a duly authorized officer of the corporation.

The term, "original petition," used in the following questions, shall mean the petition filed under Rule 1002, 1003, or 1004.]

1. Nature, location, and name of business.

a. Under what name and where do you carry on your business?

b. In what business are you engaged? (If business operations have been terminated, give the date of termination.)

c. When did you commence the business?

d. Where else, and under what other names, have you carried on business within the six years immediately preceding the filing of the original petition herein? (Give street addresses, the names of any partners, joint adventurers, or other associates, the nature of the business, and the periods for which it was carried on.)

2. Books and records.

a. By whom, or under whose supervision, have your books of account and records been kept during the six years immediately preceding the filing of the original petition herein? (Give names, addresses, and periods of time.)

b. By whom have your books of account and records been audited during the six years immediately preceding the filing of the original petition herein? (Give names, addresses, and dates of audits.)

c. In whose possession are your books of account and records? (Give names and addresses.)

d. If any of these books or records are not available, explain.

e. Have any books of account or records relating to your affairs been destroyed, lost, or otherwise disposed of within the two years immediately preceding the filing of the original petition herein? (If so, give particulars, including date of destruction, loss, or disposition, and reason therefor.)

3. Financial statements.

Have you issued any written financial statements within the two years immediately preceding the filing of the original petition herein? (Give dates, and the name and addresses of the persons to whom issued, including mercantile and trade agencies.)

4. Inventories.

a. When was the last inventory of your property taken?

b. By whom, or under whose supervision, was this inventory taken?

c. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise.)

d. When was the next prior inventory of your property taken?

e. By whom, or under whose supervision, was this inventory taken?

f. What was the amount, in dollars, of the inventory? (State whether the inventory was taken at cost, market, or otherwise).

g. In whose possession are the records of the two inventories above referred to? (Give names and addresses.)

5. Income other than from operation of business.

What amount of income, other than from operation of your business, have you received during each of the two years immediately preceding the filing of the original petition herein? (Give particulars, including each source, and the amount received therefrom.)

6. Tax returns and refunds.

a. In whose possession are copies of your federal, state and municipal income tax returns for the three years immediately preceding the filing of the original petition herein?

b. What tax refunds (income or other) have you received during the two years immediately preceding the filing of the original petition herein?

c. To what tax refunds (income or other), if any, are you, or may you be, entitled? (Give particulars, including information as to any refund payable jointly to you and your spouse or any other person.)

7. Financial accounts, certificates of deposit and safe deposit boxes.

What accounts or certificates of deposit or shares in banks, savings and loan, thrift, building and loan and homestead associations, credit unions, brokerage houses, pension funds and the like have you maintained, alone or together with any other person, and in your own or any other name, within the two years immediately preceding the filing of the original

petition herein? (Give the name and address of each institution, the name and number under which the account or certificate is maintained, and the name and address of every person authorized to make withdrawals from such account.)

b. What safe deposit box or boxes or other depository or depositories have you kept or used for your securities, cash, or other valuables within the two years immediately preceding the filing of the original petition herein? (Give the name and address of the bank or other depository, the name in which each box or other depository was kept, the name and address of every person who had the right of access thereto, a description of the contents thereof, and, if the box has been surrendered, state when surrendered or, if transferred, when transferred and the name and address of the transferee.)

8. Property held for another person.

What property do you hold for any other person? (Give name and address of each person, and describe the property, the amount or value thereof and all writings relating thereto.)

9. Property held by another person.

Is any other person holding anything of value in which you have an interest? (Give name and address, location and description of the property, and circumstances of the holding.)

10. Prior bankruptcy proceedings.

What cases under the Bankruptcy Act or title 11, United States Code have previously been brought by or against you? (State the location of the bankruptcy court, the nature and number of the case, and whether a discharge was granted or denied, the case was dismissed, or a composition, arrangement, or plan was confirmed.)

11. Receiverships, general assignments, and other modes of liquidation.

a. Was any of your property, at the time of the filing of the original petition herein, in the hands of a receiver, trustee, or other liquidating agent? (If so, give a brief description of the property and the name and address of the receiver, trustee, or other agent, and, if the agent was appointed in a court proceeding, the name and location of the court, the title and number of the case, and the nature thereof.)

b. Have you made any assignment of your property for the benefit of your creditors, or any general settlement with your creditors, within the two years immediately preceding the filing of the original petition herein? (If so, give dates, the name and address of the assignee, and a brief statement of the terms of assignment or settlement.)

12. Suits, executions, and attachments.

a. Were you a party to any suit pending at the time of the filing of the original petition herein? (If so, give the name and location of the court and the title and nature of the proceeding.)

b. Were you a party to any suit terminated within the year immediately preceding the filing of the original petition herein? (If so, give the name and location of the court, the title and nature of the proceeding, and the result.)

c. Has any of your property been attached, garnished, or seized under any legal or equitable process within the year immediately preceding the filing of the original petition herein? (If so, describe the property seized or person garnished, and at whose suit.)

13. a. Payments of loans, installment purchases and other debts.

What payments in whole or in part have you made during the year immediately preceding the filing of the original petition herein on any of the following: (1) loans; (2) installment purchases of goods and services; and (3) other debts? (Give the names and addresses of the persons receiving payment, the amounts of the loans or other debts and of the purchase price of the goods and services, the dates of the original transactions, the amounts and dates of payments, and, if any of the payees are your relatives or insiders, the relationship; if the debtor is a partnership and any of the payees is or was a partner or a relative of a partner, state the relationship; if the debtor is a corporation and any of the payees is or was an officer, director, or stockholder, or a relative of an officer, director, or stockholder, state the relationship.)

b. Setoffs.

What debts have you owed to any creditor, including any bank, which were setoff by that creditor against a debt or deposit owing by the creditor to you during the year immediately preceding the filing of the original petition herein? (Give the names and addresses of the persons setting off such debts, the dates of the setoffs, the amounts of the debts owing by you and to you and, if any of the creditors are your relatives or insiders, the relationship.)

14. Transfers of property.

a. Have you made any gifts, other than ordinary and usual presents to family members and charitable donations during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description, and value of gifts.)

b. Have you made any other transfer, absolute or for the purpose of security, or any other disposition which was not in the ordinary course of business during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and state whether the transferee is a relative, partner, shareholder, officer, director, or insider, the consideration, if any, received for the property, and the disposition of such consideration.)

15. Accounts and other receivables.

Have you assigned, either absolutely or as security, any of your accounts or other receivables during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of assignees.)

16. Repossessions and returns.

Has any property been returned to, or repossessed by, the seller, lessor, or a secured party during the year immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party getting the property and its description and value.)

17. Business leases.

If you are a tenant of business property, what is the name and address of your landlord, the amount of your rental, the date to which rent had been paid at the time of the filing of the original petition herein, and the amount of security held by the landlord?

18. Losses.

a. Have you suffered any losses from fire, theft, or gambling during the year immediately preceding the filing of the original petition herein?

(If so, give particulars, including dates, names, and places, and the amounts of money or value and general description of property lost.)

b. Was the loss covered in whole or part by insurance? (If so, give particulars.)

19. Withdrawals.

a. If you are an individual proprietor of your business, what personal withdrawals of any kind have you made from the business during the year immediately preceding the filing of the original petition herein?

b. If the debtor is a partnership or corporation, what withdrawals, in any form (including compensation, bonuses or loans), have been made or received by any member of the partnership, or by any officer, director, insider, managing executive, or shareholder of the corporation, during the year immediately preceding the filing of the original petition herein? (Give the name and designation or relationship to the debtor of each person, the dates and amounts of withdrawals, and the nature or purpose thereof.)

20. Payments or transfers to attorneys.

a. Have you consulted an attorney during the year immediately preceding or since the filing of the original petition herein? (Give date, name, and address.)

b. Have you during the year immediately preceding or since the filing of the original petition herein paid any money or transferred any property to the attorney, or to any other person on his behalf? (If so, give particulars, including amount paid or value of property transferred and date of payment or transfer.)

c. Have you, either during the year immediately preceding or since the filing of the original petition herein, agreed to pay any money or transfer any property to an attorney at law, or to any other person on his behalf? (If so, give particulars, including amount and terms of obligation.)

(If the debtor is a partnership or corporation, the following additional questions should be answered.)

21. Members of partnership; officers, directors, managers, and principal stockholders of corporation.

a. What is the name and address of each member of the partnership, or the name, title, and address of each officer, director, insider, and managing executive, and of each stockholder holding 20 percent or more of the issued and outstanding stock, of the corporation?

b. During the year immediately preceding the filing of the original petition herein, has any member withdrawn from the partnership, or any officer, director, insider, or managing executive of the corporation terminated his relationship, or any stockholder holding 20 percent or more of the issued stock disposed of more than 50 percent of his holdings? (If so, give name and address and reason for withdrawal, termination, or disposition, if known.)

c. Has any person acquired or disposed of 20 percent or more of the stock of the corporation during the year immediately preceding the filing of the petition? (If so, give name and address and particulars.)

I, ... , declare under penalty of perjury that I have read the answers contained in the foregoing statement of affairs and that they are true and correct to the best of my knowledge, information, and belief.

Executed on . . . . . .

Signature: . . . . . .

[Person declaring for partnership or corporation should indicate position or relationship to debtor.]

ADVISORY COMMITTEE NOTE

Many of the questions on this form are the same as on Form No. 7, Statement of Financial Affairs for Debtor Not Engaged in Business.

The question regarding loans repaid (#13) includes installment credit sales of goods or services. The information is helpful with respect to possible preferences.

Information regarding leases (#17) may be helpful with respect to lease termination or extension and whether the landlord may be holding a deposit.

FORM 9.—List of Creditors Holding 20 Largest Unsecured Claims

[Caption as in Form No. 2]

List of Creditors Holding 20 Largest Unsecured Claims

Following is the list of the Debtor's creditors holding the 20 largest unsecured claims which is prepared in accordance with Rule 1007(d) for filing in this chapter 11 [or chapter 9] case. The list does not include (1) those persons who come within the definition of insider set forth in 11 U.S.C. § 101(25), (2) secured creditors unless the value of the collateral is such that the unsecured deficiency places the creditor among the holders of the 20 largest unsecured claims, or (3) governmental units.

(1)	(2)	(3)	(4)	(5)
Name of creditor and complete mailing address including zip code	Name, telephone number and complete mailing address including zip code of employee, agent or department of creditor familiar with claim who may be contacted	Nature of claim (trade debt, bank loan, type of judgment, etc.)	Indicate if claim is contingent, unliquidated, disputed or subject to set-off	Amount of claim [If secured also state value of security]

Date .....

.....
Debtor.

ADVISORY COMMITTEE NOTE

This form is for use in chapter 11 reorganization and chapter 9 municipality debt adjustment cases to enable the appointment, pursuant to §§ 1102 and 901 of the Code, of a committee of unsecured creditors. The information contained on the form is to assist in expediting the formation of the committee and to assure adequate creditor representation.

In accordance with § 1102 of the Code, the form indicates that insiders should not be listed. "Insiders" is defined in § 101(25) of the Code to include, inter alia, persons who are related to the debtor, are partners, officers, directors, affiliates as further defined in § 101(2) of the Code, or are otherwise in control of the debtor. Reference should be made to § 101 for the complete listing of insiders.

The nature of the claim should be specified to indicate whether it is an institutional debt, a trade debt for merchandise or supplies, a debt based on a judgment and the underlying basis for the judgment, or the like.

In column (2), it is important to provide specific information with respect to the person to be contacted. In order to form the committee it may be necessary to write or telephone the creditors. If the creditor company is a large organization individual contact may otherwise be difficult or impossible.

A secured creditor should be listed among the 20 largest unsecured creditors only if that creditor is sufficiently undersecured so as to fall within that category.

FORM 18.—Chapter 13 Statement

[Caption as in Form No. 1]

Chapter 13 Statement

[Each question shall be answered or the failure to answer explained. If the answer is "none" or "not applicable" so state. If additional space is needed for the answer to any question, a separate sheet, properly identified and made a part hereof, should be used and attached.

The term "original petition," used in the following questions, shall mean the original petition filed under § 301 of the Code or, if the chapter 13 case was converted from another chapter of the Code, shall mean the petition by or against you which originated the first case.

This form must be completed in full whether a single or a joint petition is filed. When information is requested for "each" or "either spouse filing a petition" it should be supplied for both when a joint petition is filed.]

1. Name and residence.

a. Give full name.

Husband [or, if single,

Debtor .....

Wife .....

b. Where does debtor, if single, or each spouse filing a petition now reside?

(1) Mailing address of husband [or debtor]

.....

City or town, state and zip code

.....

.....

(2) Mailing address of wife

.....

City or town, state and zip code

.....

.....

(3) Telephone number including area code

Husband [or, if single, Debtor] .....

Wife .....

c. What does debtor, if single, or each spouse filing a petition consider his or her residence, if different from that listed in b, above?

Husband [or Debtor] .....

Wife .....

2. Occupation and income.

a. Give present occupation of debtor, if single, or each spouse filing a petition. (If more than one, list all for debtor or each spouse filing a petition.)

Husband [or Debtor] .....

.....

Wife .....

b. What is the name, address, and telephone number of present employer (or employers) of debtor, if single, or each spouse filing a petition? (Include also any identifying badge or card number with employer.)

Husband [or Debtor] .....

.....

Wife .....

.....

c. How long has debtor, if single, or each spouse filing a petition been employed by present employer?

Husband [or Debtor] .....

.....

Wife .....

.....

d. If debtor or either spouse filing a petition has not been employed by present employer for a period of one year, state the name of prior employer(s) and nature of employment during that period.

Husband [or Debtor] .....

.....

Wife .....

.....

e. Has debtor or either spouse filing a petition operated a business, in partnership or otherwise, during the past three years? (If so, give the particulars, including names, dates, and places.)

Husband [or Debtor] .....

.....

Wife .....

.....

f. Answer the following questions for debtor, if single, or each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed:

(1) What are your gross wages, salary, or commissions per pay period?

	Husband [or Debtor]	Wife
(a) Weekly	.....	.....
(b) Semi-monthly	.....	.....
(c) Monthly	.....	.....
(d) Other (specify)	.....	.....

(2) What are your payroll deductions per pay period for:

	Husband [or Debtor]	Wife
(a) Payroll taxes (including social security)	.....	.....
(b) Insurance	.....	.....
(c) Credit union	.....	.....
(d) Union dues	.....	.....
(e) Other (specify)	.....	.....

(3) What is your take-home pay per pay period?

	Husband [or Debtor]	Wife
	.....	.....

(4) What was the amount of your gross income for the last calendar year?

	Husband [or Debtor]	Wife
	.....	.....

(5) Is your employment subject to seasonal or other change?

	Husband [or Debtor]	Wife
	.....	.....

(6) Has either of you made any wage assignments or allotments? (If so, indicate which spouse's wages assigned or allotted, the name and address of the person to whom assigned or allotted, and the amount owing, if any, to such person. If allotment or assignment is to a creditor, the claim should also be listed in Item 11a.)

.....

.....

3. Dependents. (To be answered by debtor if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Does either of you pay [or receive] alimony, maintenance, or support? ..... If so, how much per month? ..... For whose support? (Give name, age, and relationship to you.)

Husband [or Debtor] .....

.....

Wife .....

.....

b. List all other dependents, other than present spouse, not listed in a, above. (Give name, age and relationship to you.)

Husband [or Debtor] .....

.....

Wife .....

.....

4. Budget.

a. Give your estimated average future monthly income, if unmarried, otherwise for each spouse whether single or joint petition is filed, unless spouses are separated and a single petition is filed.

(1)	Husband's [or Debtor's] monthly take-home pay	.....
(2)	Wife's monthly take-home pay	.....
(3)	Other monthly income (specify)	.....
	Total	.....

b. Give estimated average future monthly expenses of family (not including debts to be paid under plan), consisting of:

(1) Rent or home mortgage payment (include lot rental for trailer) .....

(2) Utilities (Electricity ....., Heat ....., Water ....., Telephone .....) .....

(3) Food .....

(4) Clothing .....

(5) Laundry and cleaning .....

(6) Newspapers, periodicals, and books (including school books) .....

(7) Medical and drug expenses .....

(8) Insurance (not deducted from wages)

(a) Auto .....

(b) Other .....

(9) Transportation (not including auto payments to be paid under plan) .....

(10) Recreation .....

(11) Dues, union, professional, social or otherwise (not deducted from wages) .....

(12) Taxes (not deducted from wages) .....

(13) Alimony, maintenance, or support payments .....

(14) Other payments for support of dependents not living at home .....

(15) Religious and other charitable contributions .....

(16) Other (specify)

....

....

Total .....

c. Excess of estimated future monthly income (last line of Item 4a, above) over estimated future expenses (last line of Item 4b, above) .....

d. Total amount to be paid each month under plan .....

5. Payment of attorney.

a. How much have you agreed to pay or what property have you agreed to transfer to your attorney in connection with this case? .....

b. How much have you paid or what have you transferred to the attorney? .....

6. Tax refunds. (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed, unless spouses are separated and a single petition is filed.)

To what tax refunds (income or other), if any, is either of you, or may either of you be, entitled? (Give particulars, including information as to any refunds payable jointly to you or any other person. All such refunds should also be listed in Item 13b.)

.....

.....

7. Financial accounts, certificates of deposit and safe deposit boxes. (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Does either of you currently have any accounts or certificates of deposit or shares in banks, savings and loan, thrift, building and loan and homestead associations, credit unions, brokerage houses, pension funds and the like? (If so, give name and address of each

institution, number and nature of account, current balance, and name and address of every other person authorized to make withdrawals from the account. Such accounts should also be listed in Item 13b.)

. . . . . .

. . . . . .

b. Does either of you currently keep any safe deposit boxes or other depositories? (If so, give name and address of bank or other depository, name and address of every other person who has a right of access thereto, and a brief description of the contents thereof, which should also be listed in Item 13b.)

. . . . . .

. . . . . .

8. Prior Bankruptcy.

What proceedings under the Bankruptcy Act or Bankruptcy Code have previously been brought by or against you or either spouse filing a petition? (State the location of the bankruptcy court, the nature and number of each proceeding, the date when it was filed, and whether a discharge was granted or denied, the proceeding was dismissed, or a composition, arrangement, or plan was confirmed.)

. . . . . .

. . . . . .

9. Foreclosures, executions, and attachments. (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Is any of the property of either of you, including real estate, involved in a foreclosure proceeding, in or out of court? (If so, identify the property and the person foreclosing.)

.....

.....

b. Has any property or income of either of you been attached, garnished, or seized under any legal or equitable process within the 90 days immediately preceding the filing of the original petition herein? (If so, describe the property seized, or person garnished, and at whose suit.)

.....

.....

10. Repossessions and returns. (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

Has any property of either of you been returned to, repossessed, or seized by the seller or by any other party, including a landlord, during the 90 days immediately preceding the filing of the original petition herein? (If so, give particulars, including the name and address of the party taking the property and its description and value.)

.....

.....

11. Transfers of Property. (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed unless spouses are separated and a single petition is filed.)

a. Has either of you made any gifts, other than ordinary and usual presents to family members and charitable donations, during the year immediately preceding the filing of the original petition herein? (If so, give names and addresses of donees and dates, description and value of gifts.)

.....

.....

b. Has either of you made any other transfer, absolute or for the purpose of security, or any other disposition, of real or personal property during the year immediately preceding the filing of the original petition herein? (Give a description of the property, the date of the transfer or disposition, to whom transferred or how disposed of, and, if the transferee is a relative or insider, the relationship, the consideration, if any, received therefor, and the disposition of such consideration.)

.....

.....

12. Debts. (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed.)

a. Debts Having Priority.

(1) Nature of claim	(2) Name of creditor and complete mailing address including zip code	(3) Specify when claim was incurred and the consideration therefor; when claim is subject to setoff, evidenced by a judgment, negotiable instrument, or other writing	(4) Indicate if claim is contingent, unliquidated, or disputed	(5) Amount of claim

1. Wages, salary, and commissions, including vacation, severance and sick leave pay owing to employees not exceeding $2,000 to each, earned within 90 days before filing of petition or cessation of business (if earlier specify date). $.....

2. Contributions to employee benefit plans for services rendered within 180 days before filing of petition or cessation of business (if earlier specify date). $.....

3. Deposits by individuals, not exceeding $900 for each for purchase, lease, or rental of property or services for personal, family, or household use that were not delivered or provided. $.....

4. Taxes owing [itemize by type of tax and taxing authority]

(A) To the United States $.....
(B) To any state .....
(C) To any other taxing authority .....

Total .....

b. Secured Debts. List all debts which are or may be secured by real or personal property. (Indicate in sixth column, if debt payable in installments, the amount of each installment, the installment period (monthly, weekly, or otherwise) and number of installments in arrears, if any. Indicate in last column whether husband or wife solely liable, or whether you are jointly liable.)

Creditor's name, account number and complete mailing address including zip code	Consideration or basis for debt	Amount claimed by creditor	If disputed, amount admitted by debtor	Description of collateral (include year and make of automobile)	Installment amount, period, and number of installments in arrears	Household or wife solely liable, or jointly liable
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
				Total secured debts		. . . . .

c. Unsecured Debts. List all other debts, liquidated and unliquidated, including taxes, attorneys' fees, and tort claims.

Creditor's name, account number and complete mailing address including zip code	Consideration or basis for debt	Amount claimed by creditor	If disputed, amount admitted by debtor	Husband or wife solely liable, or jointly liable
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
		Total unsecured debts	. . . . .	

13. Codebtors. (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed.)

a. Are any other persons liable, as cosigners, guarantors, or in any other manner, on any of the debts of either of you or is either of you so liable on the debts of others? (If so, give particulars, indicating which spouse is liable and including names of creditors, nature of debt, names and addresses of codebtors, and their relationship, if any, to you.)

.....

.....

.....

b. If so, have the codebtors made any payments on the debts? (Give name of each codebtor and amount paid by codebtor.)

.....

.....

.....

c. Has either of you made any payments on the debts? (If so, specify total amount paid to each creditor, whether paid by husband or wife, and name of codebtor.)

.....

.....

.....

14. Property and Exemptions. (To be answered by debtor, if unmarried, otherwise for each spouse whether single or joint petition is filed.)

a. Real Property. List all real property owned by either of you at date of filing of original petition herein. (Indicate in last column whether owned solely by husband or wife, or jointly.)

Description and location of property	Name of any co-owner other than spouse	Present market value (without deduction for mortgage or other security interest)	Amount of mortgage or other security interest on this property	Name of mortgagee or other secured creditor	Value claimed exempt (specify federal or state statute creating the exemption)	Owned solely by husband or wife or jointly
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .
. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .	. . . . .

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b. Personal Property. List all other property, owned by either of you at date of filing of original petition herein.

Description	Location of property if not at debtor's residence	Name of any co-owner other than spouse	Present market value (without deduction for mortgage or other security interest)	Amount of mortgage or other security interest on this property	Name of mortgagee or other secured creditor	Value claimed exempt, (specify federal or state statute creating the exemption)	Owned solely by husband or wife or jointly
Autos [give year and make]							
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
Household goods							
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
Personal effects							
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
Cash or financial account							
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
Other [specify]							
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .
. . . . .	. . . .	. . . . .	. . . . .	. . . . .	. . . .	. . . . .	. . . . .

[To be signed by both spouses when joint petition is filed.]

I, ..., [if joint petition is filed and I, ...,] declare under penalty of perjury that I have read the answers contained in the foregoing statement, consisting of . . . sheets, and that they are true and complete to the best of my knowledge, information, and belief.

.....
Husband [or Debtor]

.....
Wife

Executed on
.....

ADVISORY COMMITTEE NOTE

This form is adapted from former Chapter XIII Official Form No. 13-5. It may be used whether a single chapter 13 petition is filed or a joint petition is filed by husband and wife as authorized by § 302 of the Code.

Question 4 of the Statement, calling for a detailed family budget is particularly designed to insure that the debtor and the debtor's attorney will have compiled information relative to the feasibility of the plan prior to the creditors' meeting.

Inquiry as to most transactions and developments affecting the financial condition of the debtor is limited to the year preceding the filing of the petition or to a shorter period. The scope of examination at the meeting or at any other time is not restricted by the scope of the inquiries in the Chapter 13 Statement. In Question 14a and b any claim of exempt property should be listed. This information assists the court in comparing the creditors' return under the plan and a possible chapter 7 case. Although Chapter 13 Statements are required by Rule 1007(f) to be filed in the same number as the petition they accompany, only the original need be signed and verified, but the copies must be conformed to the original. See Bankruptcy Rule 9011(c).

Form No. 11.—Involuntary Case: Creditors' Petition

[Caption as in Form No. 1]

Involuntary Case: Creditors' Petition

1. Petitioners, ..., of *
....., and ....., of *
....., and ....., of *
....., are creditors of .....,
of * ..... [include county], holding claims against the debtor, not contingent as to liability, amounting in the aggregate, in excess of the value of any lien held by them on the debtor's property securing such claims, to at least $5000. The nature and amount of petitioners' claims are as follows: .....
.....
.....

2. The debtor's principal place of business [or principal assets or domicile or residence] has been within this district for the 180 days preceding the filing of this petition [or for a longer portion of the 180 days preceding the filing of this petition than in any other district].

3. The debtor is a person against whom an order for relief may be entered under title 11, United States Code.

* State mailing address.

4. [The debtor is generally not paying its debts as they become due as indicated by the following .....

.....]

or [Within 120 days preceding the filing of this petition, a custodian was appointed for or has taken possession of substantially all of the property of the debtor, as follows:

.....

.....]

WHEREFORE petitioners pray that an order of relief be entered against ..... under chapter 7 [or 11] of title 11, United States Code.

Signed: .....,
Attorney for Petitioners.
Address: .....
.....
[Petitioners sign if not represented by attorney]
.....,
.....,
.....,
Petitioners.

I, ..., one of the petitioners named in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information, and belief.

Executed on .....

Signature: .....,
Petitioner.

ADVISORY COMMITTEE NOTE

The requisites for an involuntary petition are specified in § 303 of the Code.

28 U.S.C. § 1746 permits the unsworn declaration in lieu of a verification. See Advisory Committee Note to Form No. 1.

Form No. 12.—Involuntary Case Against Partnership: Partner's Petition

[Caption as in Form No. 1]

Involuntary Case Against Partnership: Partner's Petition

1. Petitioner, ..., of * ..... is one of the general partners of ....., a partnership, of * ..... [include county]

2. The other general partners of the debtor are ....., of * ..... and ..... of * .....

3. The debtor has had its principal place of business [or its principal assets or its domicile or its residence] within this district for the 180 days preceding the filing of this petition [or for a longer portion of the 180 days preceding the filing of this petition than in any other district].

4. The debtor is a person against whom an order for relief may be entered under title 11, United States Code.

5. [The debtor is generally not paying its debts as they become due as indicated by the following .....] or [Within 120 days preceding the filing of this petition, a custodian was appointed for or has taken possession of substantially all of the property of the debtor, as follows:

* State mailing address.

.....

.....]

WHEREFORE, petitioner prays that an order of relief be entered against ..... under chapter 7 [or 11] of title 11, United States Code.

Signed: .....,
Attorney for Petitioner.
Address: .....,
.....,
[Petitioner signs if not represented by attorney]
.....,
Petitioner.

I, ..., the petitioner named in the foregoing petition, declare under penalty of perjury that the foregoing is true and correct according to the best of my knowledge, information and belief.

Executed on .....

Signature: .....,
Petitioner.

ADVISORY COMMITTEE NOTE

Pursuant to § 303(b)(3)(A) of the Code, a petition by fewer than all of the general partners seeking an order for relief with respect to the partnership is treated as an involuntary petition. It is adversarial in character because not all of the partners are joining in the petition.

Section 303(b)(3)(B) permits a petition against the partnership if relief has been ordered under the Code with respect to all of the general partners. In that event, the petition may be filed by a general partner, a trustee of a general partner's estate, or a creditor of the partnership. This form may be adapted for use in that type of case.

28 U.S.C. § 1472(1) specifies the proper venue alternatives for all persons, including partnerships, as domicile, residence, principal place of business or location of principal assets. These options are set forth in paragraph (3) of the form. The paragraph may be adapted for use when venue is based on a pending case commenced by an affiliate pursuant to 28 U.S.C. § 1472(2).

Form No. 13.—Summons to Debtor.

[Caption as in Form No. 1]

Summons

To the above-named debtor:

A petition under title 11, United States Code having been filed against you on . . . . . , in this bankruptcy court, praying for an order for relief under 11 U.S.C. chapter 7 [or 11],

You are hereby summoned and required to file with this court and to serve upon . . . . . , the petitioners' attorney, whose address is . . . . . , a motion or an answer* to the petition which is herewith served upon you, on or before . . . . . If you fail to do so, the order for relief will be entered.

. . . . . ,
Clerk of the Bankruptcy Court.

By: . . . . . .
Deputy Clerk.

[SEAL OF THE UNITED STATES BANKRUPTCY COURT]

Date of issuance: . . . . . .

ADVISORY COMMITTEE NOTE

This form is to be used as provided in Rule 1010.

* If you make a motion, Bankruptcy Rule 1011 governs the time within which your answer must be served.

Form No. 14.—Order for Relief

[Caption as in Form No. 1]

Order for Relief

On consideration of the petition filed on ..... against the above-named debtor, an order for relief under chapter 7 [or 11] of title 11 of the United States Code is GRANTED.

Dated: .....

BY THE COURT

.....
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form is an adaptation of former Official Form No. 11. It is appropriate for use when relief is ordered on an involuntary petition filed under § 303 of the Code with respect to chapter 7 (liquidation) or chapter 11 (reorganization).

If a contested petition is tried by the court without a jury (or with an advisory jury), the findings of fact and conclusions of law thereon must be stated separately. See Rule 7052(a), which is made applicable to proceedings on a contested petition by Rule 1018.

Form No. 15.—Appointment of Committee of Unsecured Creditors in a Chapter 9 Municipality or Chapter 11 Reorganization Case

[Caption as in Form No. 1]

Appointment of Committee of Unsecured Creditors in a Chapter 9 Municipality or Chapter 11 Reorganization Case

The following creditors of the above-named debtor holding the 7 largest unsecured claims [or who are members of a committee organized by creditors before the order for relief under chapter 9 (or 11) of the Bankruptcy Code which was fairly chosen and is representative of the

different kinds of claims to be represented and who are willing to serve are appointed to the committee of unsecured creditors:

1. .... of * .....
.....

2. .... of * .....
.....

3. .... of * .....
.....

4. .... of * .....
.....

5. .... of * .....
.....

6. .... of * .....
.....

7. .... of * .....
.....

Dated: .....

BY THE COURT

.....
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form is new. Pursuant to § 1102 of the Code the court is to appoint a committee of unsecured creditors which ordinarily is to consist of the creditors holding the 7 largest claims and who are willing to serve. If, however, a committee has been organized prior to the filing of the petition, is representative and was fairly chosen, that committee may be continued as the official or statutory committee.

This form can be adapted for use by the United States trustee who, pursuant to § 151102 of the Code, will appoint the committee. It may also be adapted for use if the court (or United States trustee on order of the court) appoints any other committee, e.g., of equity security holders.

Pursuant to § 901(a) of the Code, the provisions of § 1102, including subsection (aX1) apply in a case under chapter 9, Adjustment of Debts of Municipality. In a chapter 9 case, only the court will appoint the committee. There is no provision in chapter 15 for a United States trustee to have any appointing function in that type of a case.

Subsection (aX1) of § 1102 is not applicable in a railroad reorganization case and, therefore, the court will not appoint an unsecured creditors' committee.

Form No. 16.—Order for Meeting of Creditors and Related Orders, Combined with Notice Thereof and of Automatic Stay

[Caption as in Form No. 1]

Order for Meeting of Creditors and Fixing Times for Filing Objections to Discharge and for Filing Complaints to Determine Dischargeability of Certain Debts, Combined with Notice Thereof and of Automatic Stay

To the debtor, his creditors, and other parties in interest:

An order for relief under 11 U.S.C. chapter 7 [or, 11, or 13] having been entered on a petition filed by [or against] ..... of *....., on .....

it is ordered, and notice is hereby given, that:

[MEETING OF CREDITORS]

1. A meeting of creditors pursuant to 11 U.S.C. § 341(a) has been scheduled for .... at ..... o'clock ....m. at .....

* State mailing address.

* State mailing address.

2. The debtor shall appear in person [or, if the debtor is a partnership, by a general partner, or, if the debtor is a corporation, by its president or other executive officer] at that time and place for the purpose of being examined.

[DEADLINE TO OBJECT TO DISCHARGE OR DETERMINE NONDISCHARGEABILITY OF CERTAIN DEBTS]

3. [If the debtor is an individual] . . . . . is fixed as the last day for the filing of objections to the discharge of the debtor pursuant to 11 U.S.C. § 727.

4. [If the debtor is an individual] . . . . . is fixed as the last day for the filing of a complaint to determine the dischargeability of any debt pursuant to 11 U.S.C. § 523(c).

[ADDITIONAL INFORMATION CONCERNING THE MEETING, THE AUTOMATIC STAY AND THE DISCHARGE]

You are further notified that:

The meeting may be continued or adjourned from time to time by notice at the meeting, without further written notice to creditors.

At the meeting the creditors may file their claims, [elect a trustee as permitted by law, designate a person to supervise the meeting, elect a committee of creditors,] examine the debtor, and transact such other business as may properly come before the meeting.

As a result of the filing of the petition, certain acts and proceedings against the debtor and his property are stayed as provided in 11 U.S.C. § 362(a).

[If the debtor is an individual] If no objection to the discharge of the debtor is filed on or before the last day fixed therefor as stated in

subparagraph 3 above, the debtor will be granted his discharge. If no complaint to determine the dischargeability of a debt under clause (2), (4), or (6) of 11 U.S.C. § 523(a) is filed within the time fixed therefor as stated in subparagraph 4 above, the debt may be discharged.

[FILING OF CLAIMS]

[For a chapter 7 or 13 case] In order to have his claim allowed so that he may share in any distribution from the estate, a creditor must file a claim, whether or not he is included in the list of creditors filed by the debtor. Claims which are not filed within 90 days following the above date set for the meeting of creditors will not be allowed, except as otherwise provided by law. A claim may be filed in the office of the clerk of the bankruptcy court on an official form prescribed for a proof of claim.

[If a no-asset or nominal asset case, the following paragraph may be used in lieu of the preceding paragraph.] It appears from the schedules of the debtor that there are no assets from which any dividend can be paid to creditors. It is unnecessary for any creditor to file his claim at this time in order to share in any distribution from the estate. If it subsequently appears that there are assets from which a dividend may be paid, creditors will be so notified and given an opportunity to file their claims.

[For a chapter 11 case] The debtor [or trustee] has filed or will file a list of creditors and equity security holders pursuant to Rule 1007. Any creditor holding a listed claim which is not listed as disputed, contingent, or unliquidated as to amount, may, but need not, file a proof of claim in this case. Creditors whose claims are not listed or whose claims are listed as disputed, contingent, or unliquidated as to amount and who desire to

participate in the case or share in any distribution must file their proofs of claim on or before . . . . . , which date is hereby fixed as the last day for filing a proof of claim [or, if appropriate, on or before a date to be later fixed of which you will be notified]. Any creditor who desires to rely on the list has the responsibility for determining that he is accurately listed.

[OBJECTION TO CLAIM OF EXEMPTIONS]

Unless the court extends the time, any objection to the debtor's claim of exempt property (Schedule B-4) must be filed within 30 days after the conclusion of the meeting of creditors.

[TRUSTEE]

[If appropriate] . . . . . of*

. . . . . has been appointed [interim] trustee of the estate of the above-named debtor.

Dated: . . . . . .

BY THE COURT

. . . . . ,
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form can be used for cases filed under chapter 7, 11, or 13. It conforms with Rule 2003 which specifies that the court is to call the meeting of creditors even though, under the Code, it may not preside at such meeting.

This form revises former Official Form No. 12. The alternative paragraph is to be used when the court exercises the option under Rule 2002(e) to notify the creditors that no dividends are to be anticipated and no claims need be filed.

* State mailing address.

Form No. 17.—General Power of Attorney

[Caption as in Form No. 1]

General Power of Attorney

To .... of *....., and .....

.... of *.....:

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned and with full power of substitution, to vote on any question that may be lawfully submitted to creditors of the debtor in the above-entitled case; [if appropriate] to vote for a trustee of the estate of the debtor and for a committee of creditors; to receive dividends; and in general to perform any act not constituting the practice of law for the undersigned in all matters arising in this case.

Dated: .....

Signed: .....

[If appropriate] By .....

as .....

Address: .....

.....

[If executed by an individual] Acknowledged before me on .....

[If executed on behalf of a partnership] Acknowledged before me on ....., by ....., who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

* State mailing address.

[If executed on behalf of a corporation] Acknowledged before me on ....., by ....., who says that he is ..... of the corporation named above and is authorized to execute this power of attorney in its behalf.

....,

.....
[Official character.]

ADVISORY COMMITTEE NOTE

Rule 9010(c) requires a general power of attorney to be prepared substantially in conformity with this form which is derived from former Official Form No. 13. While a power of attorney may of course be executed in favor of an attorney at law who is also retained as such to represent the creditor executing the form, the power of attorney does not purport to confer the right to act as an attorney at law. The corollary is that one not an attorney at law may act under a general power of attorney within the limitations prescribed in the form.

Form No. 18.—Special Power of Attorney

[Caption as in Form No. 2]

Special Power of Attorney

To ....of *....., and ..... of *.....:

The undersigned claimant hereby authorizes you, or any one of you, as attorney in fact for the undersigned [if desired: and with full power of substitution,] to attend the meeting of creditors of the debtor or any adjournment thereof, and to vote in my behalf on any question that may be lawfully submitted to creditors at such meeting or adjourned meeting, and for a trustee or trustees of the estate of the debtor.

* State mailing address.

Dated: .....

Signed: .....

[If appropriate] By .....

as .....

Address: .....,

.....

[If executed by an individual] Acknowledged before me on .....

[If executed on behalf of a partnership] Acknowledged before me on ....., by ....., who says that he is a member of the partnership named above and is authorized to execute this power of attorney in its behalf.

[If executed on behalf of a corporation] Acknowledged before me on ....., by ....., who says that he is ....., of the corporation named above and is authorized to execute this power of attorney in its behalf.

.....

.....

[Official character.]

ADVISORY COMMITTEE NOTE

A special power of attorney shall conform substantially with this official form, as provided in Rule 9010(c), but it may grant either more or less authority in accordance with the language used. The form is derived from former Official Form No. 14.

Form No. 19.—Proof of Claim

[Caption as in Form No. 2]

Proof of Claim

1. [If claimant is an individual claiming for himself] The undersigned, ... who is the claimant herein, resides at * .....

[If claimant is a partnership claiming through a member] The undersigned, ..., who resides at *....., is a member of ....., a partnership, composed of the undersigned and ....., of *....., and doing business at * ....., and is authorized to make this proof of claim in behalf of the partnership.

[If claimant is a corporation claiming through an authorized officer] The undersigned, ..., who resides at * ....., is the ..... of ....., a corporation organized under the laws of ..... and doing business at *....., and is authorized to make this proof of claim on behalf of the corporation.

[If claim is made by agent] The undersigned, ..., who resides at * ....., is the agent of ....., of *....., and is authorized to make this proof of claim on behalf of the claimant.

2. The debtor was, at the time of the filing of the petition initiating

* State mailing address.

this case, and still is indebted [or liable] to this claimant, in the sum of $.....

3. The consideration for this debt [or ground of liability] is as follows .....
.....

[If filed in a chapter 7 or 13 case] This claim consists of $ ..... in principal amount and $ ..... in additional charges [or no additional charges]. [Itemize all charges in addition to principal amount of debt, state basis for inclusion and computation, and set forth any other consideration relevant to the legality of the charge.] .....
.....
.....

4. [If the claim is founded on writing] The writing on which this claim is founded (or a duplicate thereof) is attached hereto [or cannot be attached for the reason set forth in the statement attached hereto].

5. [If appropriate] This claim is founded on an open account, which became [or will become] du ....., as shown by the itemized statement attached hereto. Unless it is attached hereto or its absence is explained in an attached statement, no note or other negotiable instrument has been received for the account or any part of it.

6. No judgment has been rendered on the claim except .....
.....

7. The amount of all payments on this claim has been credited and deducted for the purpose of making this proof of claim.

8. This claim is not subject to any setoff or counterclaim except ...
.....

9. No security interest is held for this claim except .....
..... [If security interest in property of the debtor is claimed The undersigned claims the security interest under the writing referred to in paragraph 4 hereof [or under a separate writing which (or a duplicate of which) is attached hereto, or under a separate writing which cannot be attached hereto for the reason set forth in the statement attached hereto]. Evidence of perfection of such security interest is also attached hereto.

10. This claim is a general unsecured claim, except to the extent that the security interest, if any, described in paragraph 9 is sufficient to satisfy the claim. [If priority is claimed, state the amount and basis thereof.] .....
.....

Dated: .....

Signed: .....

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than 5 years or both — Title 18, U.S.C., § 152.

ADVISORY COMMITTEE NOTE

This form is derived from former Official Form No. 15. It may be used by any claimant, including a wage earner for whom alternative short forms have been specially prepared (Form Nos. 20 and No. 21), or by an agent or attorney for any claimant. Such a combined form is commonly used in practice.

If a security interest in the debtor's property is claimed, paragraph 9 requires that any security agreement (if not included in the writing on which the claim is founded and which is required by paragraph 4 to be attached) be attached to the proof of claim or that the reason why it cannot be attached be set forth. Paragraph 9 further requires evidence of perfection of the security interest to be attached to the proof of claim. See the Note to Rule 3001(d) as to what constitutes satisfactory evidence of perfection. The information so required will

expedite determination of the validity of any claimed security interest as against the trustee.

Paragraph 10, requiring an explicit statement as to whether the claim is filed as a general, priority, or secured claim, will facilitate administration and minimize troublesome litigation over the question whether a proof of claim was intended as a waiver of security. See, e.g., United States National Bank v. Chase National Bank, 331 U.S. 28, 35–36 (1947); 3 Collier, Bankruptcy ¶ 57.07[3.1] (14th ed. 1981).

Form No. 20.—Proof of Claim for Wages, Salary, or Commissions

[Caption as in Form No. 2]

Proof of Claim for Wages, Salary, or Commissions

1. The undersigned, ... , claimant herein resides at . . . . . and has social security number . . . . . .

2. The debtor owes the claimant computed as follows: $. . . . . .

(a) wages salary, or commissions for services performed from . . . . . to . . . . . , at the following rate or rates of compensation . . . . $. . . . . .

[if appropriate]

(b) allowances and benefits, such as vacation, severance and sick leave pay [specify] . . . .

3. The claimant demands priority to the extent permitted by 11 U.S.C. § 507(a)(3).

4. The claimant has received no payment, no security, and no check or other evidence of this debt except as follows: .....

Dated: .....

Signed: .....
Claimant.

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than 5 years or both - Title 18, U.S.C., § 152.

ADVISORY COMMITTEE NOTE

This form is an adaptation of former Official Form No. 16 for the exclusive use of claimants for personal earnings in cases under the Code. Its limited purpose permits elimination of recitals that are appropriate for other classes of claimants. Most claimants using the form will be entitled to priority under § 507(a)(3) of the Code. If the claim as filed includes an amount not entitled to priority because, for example, not earned within the applicable 90 day period, reference to payroll records will ordinarily permit determination of the amount of the priority, if any, to which the claimant is entitled. If such records are unavailable, the claimant may be required to supply additional information as a condition to allowance of the claim with priority.

Form No. 21.—Proof of Multiple Claims for Wages, Salary, or Commissions

[Caption as in Form No. 2]

Proof of Multiple Claims for Wages, Salary, or Commissions

1. The undersigned, ..., whose address is *..... , is the agent of the claimants listed in the statement appended to this proof of claim and is authorized to make this proof of claims on their behalf.

* State mailing address.

3. The claimants demand priority to the extent permitted by 11 U.S.C. § 507(a)(3) and (4).

4. The claimants have received no payment, no security, and no check or other evidence of this debt except as follows: .....

.....

.....

Dated: .....

Signed: .....

Penalty for Presenting Fraudulent Claim. Fine of not more than $5,000 or imprisonment for not more than 5 years or both - Title 18, U.S.C., § 152.

Statement of Wage Claims

Name, Address, & Social Security Numbers	Dates services rendered, rates of pay, and fringe benefits	Contributions to employee benefit plans	Amounts Claimed

ADVISORY COMMITTEE NOTE

This form is an alternative for Form No. 20 provided for use when there are numerous claimants for wages, salary, or commissions against a debtor's estate and they wish to have their proofs of claim executed and filed by a common agent. Use of the form should not only simplify the filing procedure for the claimants but facilitate the handling of the claims by the court.

Form No. 22.—Order Appointing Interim Trustee and Fixing Amount of Bond

[Caption as in Form No. 1]

Order Appointing Interim Trustee and Fixing Amount of Bond

(1) ....., of * .....,

is hereby appointed interim trustee of the estate of the above-named debtor.

(2) [If blanket bond has not been authorized or filed] The amount of the bond of the interim trustee is fixed at $ .....

Dated: .....

BY THE COURT

.....,
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form is for use only in a chapter 7 case. Pursuant to § 701 of the Code, the court is to appoint an interim trustee promptly after the order for relief. The interim trustee becomes the trustee if no trustee is elected. The interim trustee is to be disinterested as defined in § 101(13) and a member of the panel of private trustees established under 28 U.S.C. § 604(f). If the chapter 7 case was converted from chapter 11 or 13 the court may appoint as interim trustee the person serving as trustee in the prior case. Section 322(b) requires the court to determine the amount of the bond and sufficiency of the surety. See Form Nos. 23 and 25.

* State mailing address.

Form No. 23.—Order Approving Election of Trustee and Fixing Amount of Bond

[Caption as in Form No. 2]

Order Approving Election of Trustee and Fixing Amount of Bond

(1) ....., of *....., is hereby approved as the elected [or is hereby appointed] trustee of the estate of the above-named debtor.

(2) The amount of the bond of the trustee is fixed at $ ..... [or A blanket bond has been authorized and filed].

Dated: .....

BY THE COURT

....., Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

Creditors may elect a trustee pursuant to § 702 of the Code. If none is elected the interim trustee becomes the trustee.

* State mailing address.

Form No. 24.—Notice to Trustee of Selection and of Time Fixed for Filing a Complaint Objecting to Discharge of Debtor

[Caption as in Form No. 2]

Notice to Trustee of Selection and of Time Fixed for Filing a Complaint Objecting to Discharge of Debtor

To ....., of *.....:

You are hereby notified of your election [or appointment] as trustee of the estate of the above-named debtor. The amount of your bond has been fixed at $ ..... You are required to notify ....., Bankruptcy Judge, at ....., in writing within five days following receipt of this notice of your acceptance or rejection of the office. If you accept, your bond must be filed with the court on or before .....

[If appropriate] You are further notified that ..... has been fixed as the last day for the filing by you or any other party in interest of a complaint objecting to the discharge of the debtor.

Dated: .....

.....
Clerk of the
Bankruptcy Court.

ADVISORY COMMITTEE NOTE

This form is to be used in giving the notice required by Rule 2008. If a blanket bond has been authorized pursuant to Rule 2010(a), the second sentence of the form and the last sentence of the first paragraph may be deleted.

* State mailing address.

Form No. 25.—Bond and Order Approving Bond of Trustee

[Caption as in Form No. 1]

Bond and Order Approving Bond of Trustee

We, ..., of * .....,

as principal, and ..... of *

....., as surety, bind ourselves to the United States in the sum of $ ..... for the faithful performance by the undersigned principal of his official duties as trustee of the estate of the above-named debtor.

Dated .....

.....
Principal

.....
Surety

The bond filed by ..... of * .....

as trustee of the estate of the above-named debtor is hereby approved.

Dated .....

BY THE COURT

.....,
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form may be used in an individual case under § 322(a) of the Code, or, by modification of the caption, the reference in the bond to debtor, and, where necessary, the reference to the principal, it may be adapted for use in a series of cases when a blanket bond is given pursuant to Rule 2010(a). Unless otherwise provided by local rule, the completed bond is to be filed with the court in accordance with § 322(a).

* State mailing address.

Form No. 26.—Certificate of Retention of Debtor in Possession

[Caption as in Form No. 1]

Certificate of Retention of Debtor in Possession

I hereby certify that the above-named debtor continues in possession of its estate as debtor in possession, no trustee having been appointed.

Dated .....

....., Clerk of the Bankruptcy Court.

ADVISORY COMMITTEE NOTE

This form may be used in chapter 11 reorganization cases. Usually, a trustee will not be appointed in which event the debtor is automatically continued in possession pursuant to § 1101(a) of the Code.

When evidence of debtor in possession status is required, this certificate may be used in accordance with Rule 2011.

Form No. 27.—Discharge of Debtor

[Caption as in Form No. 1]

Discharge of Debtor

It appearing that the person named above has filed a petition commencing a case under title 11, United States Code on ....., and an order for relief was entered under chapter 7 and that no complaint objecting to the discharge of the debtor was filed within the time fixed by the court [or that a complaint objecting to discharge of the debtor was filed and, after due notice and hearing, was not sustained]; it is ordered that

1. The above-named debtor is released from all dischargeable debts.

2. Any judgment heretofore or hereafter obtained in any court other than this court is null and void as a determination of the personal liability

of the debtor with respect to any of the following:

(a) debts dischargeable under 11 U.S.C. § 523;

(b) unless heretofore or hereafter determined by order of this court to be nondischargeable, debts alleged to be excepted from discharge under clauses (2), (4) and (6) of 11 U.S.C. § 523(a);

(c) debts determined by this court to be discharged.

3. All creditors whose debts are discharged by this order and all creditors whose judgments are declared null and void by paragraph 2 above are enjoined from instituting or continuing any action or employing any process or engaging in any act to collect such debts as personal liabilities of the above-named debtor.

Dated: .....

BY THE COURT

.....
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form is a revision of former Official Form No. 24. It takes into account the features of § 523 of the Code which in turn, were derived from the 1970 amendments to the Bankruptcy Act.

Form No. 28.—Order and Notice for Hearing on Disclosure Statement

[Caption as in Form No. 1]

Order and Notice for Hearing on Disclosure Statement

To the debtor, its creditors, and other parties in interest:

A disclosure statement and a plan under chapter 11 [or chapter 9] of the Bankruptcy Code having been filed by . . . . . on . . . . . ,

it is ordered and notice is hereby given, that:

1. The hearing to consider the approval of the disclosure statement shall be held at . . . . . , on . . . . . , at . . . . . o'clock . . . .m.

2. . . . . is fixed as the the last day for filing and serving in accordance with Rule 3017(a) written objections to the disclosure statement.

3. Within . . . . . days after entry of this order, the debtor in possession [or trustee or debtor or . . . . . , proponent of the plan] shall transmit the disclosure statement and plan to the debtor, trustee, each committee appointed pursuant to § 1102 of the Code, the Securities and Exchange Commission and any party in interest who has requested or requests in writing a copy of the disclosure statement and plan.

4. Requests for copies of the disclosure statement and plan shall be mailed to the debtor in possession [or trustee or debtor or . . . . .] at * . . . . . .

Dated: . . . . . .

* State mailing address.

BY THE COURT

. . . . . .
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form is new and is related to Rule 3017(a). Section 1125 of the Code requires court approval of a disclosure statement before votes may be solicited for or against a plan in either chapter 11, reorganization or chapter 9, municipality cases. Before the court may approve a disclosure statement it must find that it contains adequate information to enable creditors whose votes will be solicited to be able to make an informed judgment about the plan.

Objections may be filed to the disclosure statement. Rule 3017(a) specifies that the court may fix a time for filing of objections or they can be filed at any time prior to approval of the statement.

Rule 3017(a) also specifies the persons who are to receive copies of the statement and plan prior to the hearing. These documents will not be sent to all parties in interest because at this stage of the case it could be unnecessarily expensive and confusing. However, any party in interest may request copies. The request should be made in writing (Rule 3017(a)), and sent to the person mailing the statement and plan which, as the form indicates, would usually be the proponent of the plan.

Form No. 29.—Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof

[Caption as in Form No. 1]

Order Approving Disclosure Statement and Fixing Time for Filing Acceptances or Rejections of Plan, Combined with Notice Thereof

A disclosure statement under chapter 11 of the Bankruptcy Code having been filed by . . . . . , on . . . . . [if appropriate, and by . . . . . , on . . . . .], referring to a plan under chapter 11 of the Code filed by . . . . . , on . . . . . [if appropriate, and by . . . . . , on . . . . . respectively] [if appropriate, as modified by a modification filed on . . . . .]; and

It having been determined after hearing on notice that the disclosure statement [or statements] contain[s] adequate information;

It is ordered, and notice is hereby given, that:

A. The disclosure statement filed by ..... dated ..... [if appropriate, and by ...., dated .....] is [are] approved.

B. ..... is fixed as the last day for filing written acceptances or rejections of the plan [or plans] referred to above.

C. Within .... days after the entry of this order, the plan [or plans] [or a summary or summaries thereof approved by the court], [if appropriate a summary approved by the court of its opinion, if any, dated ....., approving the disclosure statement [or statements]], the disclosure statement [or statements] and a ballot conforming to Official Form No. 29 shall be transmitted by mail to creditors, equity security holders and other parties in interest as provided in Rule 3017(d).

D. If acceptances are filed for more than one plan, preferences among the plans so accepted may be indicated.

[If appropriate] E. ..... is fixed for the hearing on confirmation of the plan [or plans].

[If appropriate] F. ..... is fixed as the last day for filing and serving pursuant to Rule 3020(b)(1) written objections to confirmation of the plan.

Dated: .....

BY THE COURT

.....

Bankruptcy Judge.

[If the court directs that a copy of the opinion should be transmitted in lieu of or in addition to the summary thereof, the appropriate change should be made in paragraph C of this order.]

ADVISORY COMMITTEE NOTE

This form is new. As provided in § 1125 of the Code, a disclosure statement must be approved by the court prior to the solicitation of votes to a plan. This form may be used for such approval, to give notice of the time fixed for filing acceptances or rejections and the time fixed for the hearing on confirmation if such a time has been fixed.

Form No. 30.—Ballot for Accepting or Rejecting Plan

[Caption as in Form No. 1]

Ballot for Accepting or Rejecting Plan

Filed by ..... on .....

The plan referred to in this ballot can be confirmed by the court and thereby made binding on you if it is accepted by the holders of two-thirds in amount and more than one-half in number of claims in each class and the holders of two-thirds in amount of equity security interests in each class voting on the plan. In the event the requisite acceptances are not obtained, the court may nevertheless confirm the plan if the court finds that the plan accords fair and equitable treatment to the class rejecting it. To have your vote count you must complete and return this ballot.

[If equity security holder] The undersigned, the holder of [state number] ..... shares of [describe type] ..... stock of the above-named debtor, represented by Certificate(s) No. .....,

registered in the name of .....

[If bondholder, debenture holder, or other debt security hold

undersigned, the holder of [state unpaid principal amount] $ .....

of [describe security] ..... of the above-named debt

a stated maturity date of ..... [if applicable registere

name of .....] [if applicable beari

number(s) .....]

[If holder of general claim] The undersigned, a creditor of th

named debtor in the unpaid principal amount of $ .....,

[Check One Box]

/_/ Accepts

/_/ Rejects

the plan for the reorganization of the above-named debtor.

[If more than one plan is accepted, the following may but nee

completed.] The undersigned prefers the plans accepted in the f

order: [identify plans]

1. .....

2. .....

Dated: .....

Print or type name: .....

Signed: .....

[If appropriate] By: .....

as: .....

Address: .....

.....

Return this ballot on or before .....

to:

Name: .....

Address: .....

ADVISORY COMMITTEE NOTE

This form may be modified as necessary to include identification of as many plans as may have been transmitted on which a vote will be taken.

The form can also be modified to take account of the types of parties who will vote as among equity security holders (see § 101(15) of the Code for definition of equity security), security holders (see § 101(35) for definition of security), secured creditors and unsecured creditors.

Before the form is transmitted, the blanks identifying the plan and the name and address of the person to whom it should be returned should be completed for the information of creditors and equity security holders.

Form No. 31.—Order Confirming Plan

[Caption as in Form No. 1]

Order Confirming Plan

The plan under chapter 11 of the Bankruptcy Code filed by ...., on ..... [if appropriate, as modified by a modification filed on .....,] or a summary thereof having been transmitted to creditors and equity security holders; and

It having been determined after hearing on notice that:

1. The plan has been accepted in writing by the creditors and equity security holders whose acceptance is required by law; and

2. The provisions of chapter 11 of the Code have been complied with; that the plan has been proposed in good faith and not by any means forbidden by law; and

3. Each holder of a claim or interest has accepted the plan [or will receive or retain under the plan property of a value, as of the effective date of the plan, that is not less than the amount that such holder would receive or retain if the debtor were liquidated under chapter 7 of the Code on such date] [or The plan does not discriminate unfairly, and is fair and equitable, with respect to each class of claims or interests that is impaired under, and has not accepted the plan]; and

4. All payments made or promised by the debtor or by a person issuing securities or acquiring property under the plan or by any other person for services or for costs and expenses in, or in connection with, the plan and incident to the case, have been fully disclosed to the court and are reasonable or, if to be fixed after confirmation of the plan, will be subject to the approval of the court; and

5. The identity, qualifications, and affiliations of the persons who are to be directors or officers, or voting trustees, if any, of the debtor [and an affiliate of the debtor participating in a joint plan with the debtor] [or a successor to the debtor under the plan], after confirmation of the plan, have been fully disclosed, and the appointment of such persons to such offices, or their continuance therein, is equitable, and consistent with the interests of the creditors and equity security holders and with public policy; and

6. The identity of any insider that will be employed or retained by the debtor and his compensation have been fully disclosed; and

7. [If applicable] Any regulatory commission with jurisdiction, after confirmation of the plan, over the rates of the debtor has approved any rate change provided for in the plan [or any rate change is expressly conditioned on approval of any regulatory agency having jurisdiction over the rates of the debtor; and

8. [If appropriate] Confirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan;]:

It is ordered that:

The plan filed by . . . . . ,

on . . . . . , a copy of which plan is attached hereto, is confirmed.

Dated: . . . . . .

BY THE COURT

. . . . . .

Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

The order of confirmation specifies those matters heard and determined by the court at the hearing on confirmation which are required by the Code in order for a plan to be confirmed.

In the case of an individual chapter 11 debtor, Form No. 27 may be adapted for use together with this form.

Form No. 32.—Notice of Filing Final Account

[Caption as in Form No. 1]

Notice of Filing Final Account[s] of Trustee, of Hearing on Applications for Compensation [and of Hearing on Abandonment of Property by th Trustee]

To the creditors:

The final report[s] and account[s] of the trustee in this case having been filed,

Notice is hereby given, that there will be a hearing held at ....., ..., on ....., at ....., o'clock ....m., for the purpose [as appropriate] of examining and passing on the report[s] and account[s], acting on applications for compensation, and transacting such other business as may properly come before the court. Attendance by creditors is welcomed but not required.

The following applications for compensation have been filed:

Applicants	Commission or Fees	Expenses
..... Interim Trustee	$.....	$.....
..... Trustee	$.....	$.....
..... Attorney for debtor	$.....	$.....
..... Attorney for interim trustee	$.....	$.....
..... Attorney for trustee	$.....	$.....
..... Attorney for petitioning creditors	$.....	$.....
.....	$.....	$.....

Creditors may be heard before the applications are determined.

The account of the trustee shows total receipts of $ . . . . . and total disbursements of $ . . . . . The balance on hand is $ . . . . . .

In addition to expenses of administration as may be allowed by the court, liens and priority claims totalling $ . . . . . , must be paid in advance of any dividend to general creditors.

Claims of general creditors totalling $ . . . . . have been allowed.

[If appropriate] The trustee's application to abandon the following property will be heard and acted on:

. . . . . .

. . . . . .

The debtor has [not] been discharged.

Dated: . . . . . .

BY THE COURT

. . . . . ,

Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form is adapted from former Official Form No. 29 which is an adaptation of a form which has been made available to bankruptcy judges by the Administrative Office of the United States Courts and used for a number of years.

Form No. 33.—Final Decree

[Caption as in Form No. 1]

Final Decree

The estate of the above-named debtor having been fully administered [if appropriate and the deposit required by the plan having been distributed] it is ordered that:

1. [If applicable] .....

is hereby discharged as trustee of the estate of the above-named debtor and the bond is cancelled.

2. [Add provisions by way of injunction or otherwise as may be equitable.]

3. The chapter 7, [or 9 or 11 or 13] case of the above-named debtor is closed.

Dated: .....

BY THE COURT

.....,
Bankruptcy Judge.

ADVISORY COMMITTEE NOTE

This form is to be used in conjunction with Rule 3022. The final decree may discharge the trustee if one was appointed and if the trustee had not been discharged at an earlier time.

Section 350 of the Code requires the court to close the case after an estate has been fully administered and the trustee discharged. That section is applicable to chapter 7, 9, 11 and 13 cases and this form may be adapted to the circumstances of the particular case.

Form No. 34.—Caption of Adversary Proceeding

UNITED STATES BANKRUPTCY COURT
..... DISTRICT OF .....

In re Case No.	:
.....,	:
Debtor,	:
.....,	:
Plaintiff,	ADV. PRO. NO. .....
v.	:
.....,	:
Defendant.	:

Complaint [or other Designation]

ADVISORY COMMITTEE NOTE

Rule 7010 requires the caption of a pleading in an adversary proceeding to conform substantially to this form.

Form No. 35.—Notice of Appeal to a District Court or Bankruptcy Appellate Panel from a Judgment of a Bankruptcy Court Entered in an Adversary Proceeding

UNITED STATES BANKRUPTCY COURT
..... DISTRICT OF .....

In re Case No.	:
.....,	:
Debtor,	:
.....,	:
Plaintiff,	ADV. PRO. NO. .....
v.	:
.....,	:
Defendant.	:

NOTICE OF APPEAL

....., the plaintiff [or defendant or other party] appeals to the district court [or the bankruptcy appellate panel, from the final judgment [or final order or final decree (describe it)] of the bankruptcy court entered in this adversary proceeding on the ..... day of ..... The parties to the judgment [or order or decree] appealed from and the names and addresses of their respective attorneys are as follows:

.....

.....

Dated: .....

Signed: .....,
Attorney for Appellant.
Address: .....

ADVISORY COMMITTEE NOTE

This form is an adaptation of the suggested form of notice of appeal which accompanies the Federal Rules of Appellate Procedure.

If the appeal does not arise in an adversary proceeding the caption should conform to that in Official Form No. 2. This form may be modified for an appeal from an interlocutory order. See Rule 8001(b).

○

98th Congress, 1st Session - - - - - - - - House Document No. 98-53

JOINT SESSION OF CONGRESS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

HIS CENTRAL AMERICA POLICY

APRIL 27, 1983.—Message and accompanying papers referred to the Committee of the Whole House on the State of the Union and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

11-011 O WASHINGTON: 1983

To the Congress of the United States:

A number of times in past years, Members of Congress and a President have come together in meetings like this to resolve a crisis. I have asked for this meeting in the hope that we can prevent one.

It would be hard to find many Americans who are not aware of our stake in the Middle East, the Persian Gulf, or the NATO line dividing the free world from the Communist bloc. The same could be said for Asia.

But in spite of, or maybe because of, a flurry of stories about places like Nicaragua and El Salvador and, yes, some concerted propaganda, many of us find it hard to believe we have a stake in problems involving those countries. Too many have thought of Central America as a place way down below Mexico that can not possibly constitute a threat to our well being.

That is why I have asked for this session. Central America's problems do directly affect the security and well being of our own people. And Central America is much closer to the United States than many of the world trouble spots that concern us. As we work to restore our own economy, we cannot afford to lose sight of our neighbors to the South.

El Salvador is nearer to Texas than Texas is to Massachusetts. Nicaragua is just as close to Miami, San Antonio, San Diego, and Tucson as those cities are to Washington where we are gathered tonight.

But nearness on the map does not even begin to tell the strategic importance of Central America, bordering as it does on the Caribbean—our lifeline to the outside world. Two-thirds of all our foreign trade and petroleum pass through the Panama Canal and the Caribbean. In a European crisis, at least half of our supplies for NATO would go through these areas by sea. It is well to remember that in early 1942 a handful of Hitler's submarines sank more tonnage there than in all of the Atlantic Ocean. And they did this without a single naval base anywhere in the area.

Today, the situation is different. Cuba is host to a Soviet combat brigade, a submarine base capable of servicing Soviet submarines, and military air bases visited regularly by Soviet military aircraft.

Because of its importance, the Caribbean Basin is a magnet for adventurism. We are all aware of the Libyan cargo planes refueling in Brazil a few days ago on their way to deliver medical supplies to Nicaragua. Brazilian authorities discovered the so-called medical supplies were actually munitions and prevented their delivery. You may remember that last month, speaking on national television, I showed an aerial photo of an airfield being built on the island of Grenada. Well, if that airfield had been completed, those planes could have refueled there and completed their journey.

If the Nazis during World War II and the Soviets today could recognize the Caribbean and Central America as vital to our interests, should not we also?

For several years now, under two administrations, the United States has been increasing its defense of freedom in the Caribbean Basin. And I can tell you tonight, democracy is beginning to take root in El Salvador which, until a short time ago, knew only dictatorship. The new government is now delivering on its promises of democracy, reforms, and free elections. It was not easy and there was resistance to many of the attempted reforms with assassinations of the reformers. Guerrilla bands and urban terrorists were portrayed in a worldwide propaganda campaign as freedom fighters representative of the people. Ten days before I came into office, the guerrillas launched what they called a "final offensive" to overthrow the government. Their radio boasted that our new Administration would be too late to prevent their victory. They learned democracy cannot be so easily defeated.

President Carter did not hesitate. He authorized arms and ammunition to El Salvador. The guerrilla offensive failed, but not America's will. Every President since this country assumed global responsibilities has known that those responsibilities could only be met if we pursued a bipartisan foreign policy.

As I said a moment ago, the government of El Salvador has been keeping its promises, like the land reform program which is making thousands of farm tenants, farm owners. In a little over 3 years, 20 percent of the arable land in El Salvador has been redistributed to more than 450,000 people. That is about one in ten Salvadorans who has directly benefitted from this program.

El Salvador has continued to strive toward an orderly and democratic society. The government promised free elections. On March 28th, little more than a year ago, after months of campaigning by a variety of candidates, the suffering people of El Salvador were offered a chance to vote—to choose the kind of government they wanted. Suddenly the so-called freedom fighters in the hills were exposed for what they really are—a small minority who want power for themselves and their backers—not democracy for the people. The guerrillas threatened death to anyone who voted. They destroyed hundreds of buses and trucks to keep the people from getting to the polling places. Their slogan was brutal: "Vote today, die tonight." But on election day, an unprecedented 80 percent of the electorate braved ambush and gunfire, and trudged for miles to vote for freedom. That is truly fighting for freedom. We can never turn our backs on that.

Members of this Congress who went there as observers told me of a woman who was wounded by rifle fire on the way to the polls, who refused to leave the line to have her wound treated until after she had voted. Another woman had been told by the guerrillas she would be killed when she returned from the polls, and she told the guerrillas, "You can kill me, you can kill my family, kill my neighbors, but you can't kill us all." The real freedom fighters of El Salvador turned out to be the people of that country—the young, the old, the in-between—more than 1 million of them out of a population of less than 5 million. The world should respect this courage, not allow it to be belittled or forgotten. Again, I say in good conscience, we can never turn our backs on that.

The democratic political parties and factions in El Salvador are coming together around the common goal of seeking a political solu-

tion to their country's problems. New national elections will be held this year and they will be open to all political parties. The government has invited the guerrillas to participate in the election and is preparing an amnesty law. The people of El Salvador are earning their freedom and they deserve our moral and material support to protect it.

Yes, there are still major problems regarding human rights, the criminal justice system, and violence against non-combatants. And, like the rest of Central America, El Salvador also faces severe economic problems. But, in addition to recession-depressed prices for major agricultural exports, El Salvador's economy is being deliberately sabotaged.

Tonight in El Salvador—because of ruthless guerrilla attacks—much of the fertile land cannot be cultivated; less than half the rolling stock of the railways remains operational; bridges, water facilities, telephone and electrical systems have been destroyed and damaged. In one 22-month period, there were 5,000 interruptions of electrical power. One region was without electricity for a third of a year.

I think Secretary of State Shultz put it very well the other day:

> Unable to win the free loyalty of El Salvador's people, the guerrillas are deliberately and systematically depriving them of food, water, transportation, light, sanitation, and jobs. And these are the people who claim they want to help the common people.

They do not want elections because they know they would be defeated. But, as the previous election showed, the Salvadoran people's desire for democracy will not be defeated.

The guerrillas are not embattled peasants armed with muskets. They are professionals, sometimes with better training and weaponry than the government's soldiers. The Salvadoran battalions that have received U.S. training have been conducting themselves well on the battlefield and with the civilian population. But, so far, we have only provided enough money to train one Salvadoran soldier out of ten, fewer than the number of guerrillas trained by Nicaragua and Cuba.

And let me set the record straight on Nicaragua, a country next to El Salvador. In 1979, when the new government took over in Nicaragua, after a revolution which overthrew the authoritarian rule of Somoza, everyone hoped for the growth of democracy. We in the United States did, too. By January of 1981, our emergency relief and recovery aid to Nicaragua totalled $118 million—more than provided by any other developed country. In fact, in the first 2 years of Sandinista rule, the United States directly or indirectly sent five times more aid to Nicaragua than it had in the 2 years prior to the revolution. Can anyone doubt the generosity and good faith of the American people?

These were hardly the actions of a nation implacably hostile to Nicaragua. Yet, the government of Nicaragua has treated us as an enemy. It has rejected our repeated peace efforts. It has broken its promises to us, to the Organization of American States, and, most important of all, to the people of Nicaragua.

No sooner was victory achieved than a small clique ousted others who had been part of the revolution from having any voice in government. Humberto Ortega, the Minister of Defense, declared Marxism-Leninism would be their guide, and so it is.

The government of Nicaragua has imposed a new dictatorship; it has refused to hold the elections it promised; it has seized control of most media and subjects all media to heavy prior censorship; it denied the bishops and priests of the Roman Catholic Church the right to say Mass on radio during Holy Week; it insulted and mocked the Pope; it has driven the Miskito Indians from their homelands—burning their villages, destroying their crops, and forcing them into involuntary internment camps far from home; it has moved against the private sector and free labor unions; it condoned mob action against Nicaragua's independent human rights commission and drove the director of that commission into exile.

In short, after all these acts of repression by the government, is it any wonder opposition has formed? Contrary to propaganda, the opponents of the Sandinistas are not die-hard supporters of the previous Somoza regime. In fact, many are anti-Somoza heroes who fought beside the Sandinistas to bring down the Somoza government. Now they have been denied any part in the new government because they truly wanted democracy for Nicaragua and still do. Others are Miskito Indians fighting for their homes, lands, and lives.

The Sandinista revolution in Nicaragua turned out to be just an exchange of one set of autocratic rulers for another, and the people still have no freedom, no democratic rights, and more poverty. Even worse than its predecessor, it is helping Cuba and the Soviets to destabilize our hemisphere.

Meanwhile, the government of El Salvador, making every effort to guarantee democracy, free labor unions, freedom of religion, and a free press, is under attack by guerrillas dedicated to the same philosophy that prevails in Nicaragua, Cuba, and yes, the Soviet Union. Violence has been Nicaragua's most important export to the world. It is the ultimate in hypocrisy for the unelected Nicaraguan government to charge that we seek their overthrow when they are doing everything they can to bring down the elected government of El Salvador. The guerrilla attacks are directed from a headquarters in Managua, the capital of Nicaragua.

But let us be clear as to the American attitude toward the government of Nicaragua. We do not seek its overthrow. Our interest is to insure that it does not infect its neighbors through the export of subversion and violence. Our purpose, in conformity with American and international law, is to prevent the flow of arms to El Salvador, Honduras, Guatemala, and Costa Rica. We have attempted to have a dialogue with the government of Nicaragua but it persists in its efforts to spread violence.

We should not—and we will not—protect the Nicaraguan government from the anger of its own people. But we should, through diplomacy, offer an alternative. And, as Nicaragua ponders its options, we can and will—with all the resources of diplomacy—protect each country of Central America from the danger of war.

Even Costa Rica, Central America's oldest and strongest democracy, a government so peaceful it does not even have an army, is the object of bullying and threats from Nicaragua's dictators.

Nicaragua's neighbors know that Sandinista promises of peace, non-alliance, and non-intervention have not been kept. Some 36 new military bases have been built—there were only 13 during the Somoza years.

Nicaragua's new army numbers 25,000 men supported by a militia of 50,000. It is the largest army in Central America supplemented by 2,000 Cuban military and security advisors. It is equipped with the most modern weapons, dozens of Soviet-made tanks, 800 Soviet-bloc trucks, Soviet 152-MM howitzers, 100 anti-aircraft guns, plus planes and helicopters. There are additional thousands of civilian advisors from Cuba, the Soviet Union, East Germany, Libya, and the Palestine Liberation Organization. And we are attacked because we have 55 military trainers in El Salvador.

The goal of the professional guerrilla movements in Central America is as simple as it is sinister—to destabilize the entire region from the Panama Canal to Mexico. If you doubt me on this point, just consider what Cayetano Carpio, the now-deceased Salvadoran guerrilla leader, said earlier this month. Carpio said that after El Salvador falls, El Salvador and Nicaragua would be "arm-in-arm and struggling for the total liberation of Central America."

Nicaragua's dictatorial junta, who themselves made war and won power operating from bases in Honduras and Costa Rica, like to pretend they are today being attacked by forces based in Honduras. The fact is, it is Nicaragua's government that threatens Honduras, not the reverse.

It is Nicaragua who has moved heavy tanks close to the border, and Nicaragua who speaks of war. It was Nicaraguan radio that announced on April 8th the creation of a new, unified revolutionary coordinating board to push forward the Marxist struggle in Honduras.

Nicaragua, supported by weapons and military resources provided by the Communist bloc, represses its own people, refuses to make peace, and sponsors a guerrilla war against El Salvador.

President Truman's words are as apt today as they were in 1947, when he, too, spoke before a Joint Session of the Congress:

> At the present moment in world history nearly every nation must choose between alternative ways of life. The choice is too often not a free one.
>
> One way of life is based upon the will of the majority, and is distinguished by free institutions, representative government, free elections, guarantees of individual liberty, freedom of speech and religion, and freedom from political oppression.
>
> The second way of life is based upon the will of a minority forcibly imposed upon the majority. It relies upon terror and oppression, a controlled press and radio, fixed elections, and the suppression of personal freedoms.
>
> I believe that it must be the policy of the United States to support free peoples who are resisting attempted subjugation by armed minorities or by outside pressures.

> I believe that we must assist free peoples to work out their own destinies in their own way.
>
> I believe that our help should be primarily through economic and financial aid which is essential to economic stability and orderly political processes.
>
> . . . Collapse of free institutions and loss of independence would be disastrous not only for them but for the world. Discouragement and possibly failure would quickly be the lot of neighboring peoples striving to maintain their freedom and independence.

The countries of Central America are smaller than the nations that prompted President Truman's message. But the political and strategic stakes are the same. Will our response—economic, social, military—be as appropriate and successful as Mr. Truman's bold solutions to the problems of postwar Europe?

Some people have forgotten the successes of those years—and the decades of peace, prosperity, and freedom they secured.

Some people talk as though the United States were incapable of acting effectively in international affairs without risking war or damaging those we seek to help.

Are democracies required to remain passive while threats to their security and prosperity accumulate?

Must we just accept the destabilization of an entire region from the Panama Canal to Mexico on our southern border?

Must we sit by while independent nations of this hemisphere are integrated into the most aggressive empire the modern world has seen?

Must we wait while Central Americans are driven from their homes, like the more than 4 million who have sought refuge out of Afghanistan or the 1½ million who have fled Indochina or the more than 1 million Cubans who have fled Castro's Caribbean utopia? Must we, by default, leave the people of El Salvador no choice but to flee their homes, creating another tragic human exodus?

I do not believe that a majority of the Congress or the country that counsels passivity, resignation, defeatism, in the face of this challenge to freedom and security in our hemisphere.

I do not believe that a majority of the Congress or the country is prepared to stand by passively while the people of Central America are delivered to totalitarianism and we ourselves are left vulnerable to new dangers.

Only last week an official of the Soviet Union reiterated Brezhnev's threat to station nuclear missiles in this hemisphere—five minutes from the United States. Like an echo, Nicaragua's Commandante, Daniel Ortega, confirmed that, if asked, his country would consider accepting those missiles. I understand that today they may be having second thoughts.

Now, before I go any further, let me say to those who invoke the memory of Vietnam: There is no thought of sending American combat troops to Central America; they are not needed—indeed, they have not been requested there. All our neighbors ask of us is assistance in training and arms to protect themselves while they build a better, freer life.

We must continue to encourage peace among the nations of Central America. We must support the regional efforts now underway to promote solutions to regional problems.

We cannot be certain that the Marxist-Leninist bands who believe war is an instrument of politics will be readily discouraged. It is crucial that we not become discouraged before they do. Otherwise the region's freedom will be lost and our security damaged in ways that can hardly be calculated.

If Central America were to fall, what would the consequences be for our position in Asia and Europe, and for alliances such as NATO? If the United States cannot respond to a threat near our own borders, why should Europeans or Asians believe we are seriously concerned about threats to them? If the Soviets can assume that nothing short of an actual attack on the United States will provoke an American response, which ally, which friend will trust us then?

The Congress shares both the power and the responsibility for our foreign policy.

Tonight, I ask you, the Congress, to join me in a bold, generous approach to the problems of peace and poverty, democracy and dictatorship in the region. Join me in a program that prevents Communist victory in the short run, but goes beyond to produce, for the deprived people of the area, the reality of present progress and the promise of more to come.

Let us lay the foundation for a bipartisan approach to sustain the independence and freedom of the countries of Central America. We in the Administration reach out to you in this spirit.

We will pursue four basic goals in Central America:

—First: In response to decades of inequity and indifference, we will support democracy, reform, and human freedom. This means using our assistance, our powers of persuasion, and our legitimate "leverage" to bolster humane democratic systems where they already exist and to help countries on their way to that goal complete the process as quickly as human institutions can be changed. Elections—in El Salvador and also in Nicaragua—must be open to all, fair and safe. The international community must help. We will work at human rights problems, not walk away from them.

—Second: In response to the challenge of world recession and, in the case of El Salvador, to the unrelenting campaign of economic sabotage by the guerrillas, we will support economic development. By a margin of two-to-one, our aid is economic, not military. Seventy-seven cents out of every dollar we will spend in the area this year goes for food, fertilizers, and other essentials for economic growth and development. And our economic program goes beyond traditional aid: The Caribbean Basin Initiative introduced in the House earlier today will provide powerful trade and investment incentives to help these countries achieve self-sustaining economic growth without exporting U.S. jobs. Our goal must be to focus our immense and growing technology to enhance health care, agriculture, industry; to ensure that we who inhabit this interdependent region come to know and understand each other better, retaining our diverse identities, respecting our diverse traditions and institutions.

—Third: In response to the military challenge from Cuba and Nicaragua—to their deliberate use of force to spread tyranny—we will support the security of the region's threatened nations. We do not view security assistance as an end in itself, but as a shield for democratization, economic development, and diplomacy. No amount of reform will bring peace so long as guerrillas believe they will win by force. No amount of economic help will suffice if guerrilla units can destroy roads, bridges, power stations, and crops again and again with impunity. But, with better training and material help, our neighbors can hold off the guerrillas and give democratic reform time to take root.

—Fourth: We will support dialogue and negotiations—both among the countries of the region and within each country. The terms and conditions of participation in elections are negotiable. Costa Rica is a shining example of democracy. Honduras has made the move from military rule to a democratic government. Guatemala is pledged to the same course. The United States will work toward a political solution in Central America which will serve the interests of the democratic process.

To support these diplomatic goals, I offer these assurances:

—The United States will support any agreement among Central American countries for the withdrawal—under fully verifiable and reciprocal conditions—of all foreign military and security advisors and troops.

—We want to help opposition groups join the political process in all countries and compete by ballots instead of bullets.

—We will support any verifiable, reciprocal agreement among Central American countries on the renunciation of support for insurgencies on neighbors' territory.

—And, finally, we desire to help Central America end its costly arms race, and will support any verifiable, reciprocal agreements on the non-importation of offensive weapons.

To move us toward these goals more rapidly, I am tonight announcing my intention to name an Ambassador-at-Large as my special envoy to Central America. He or she will report to me through the Secretary of State. The Ambassador's responsibilities will be to lend U.S. support to the efforts of regional governments to bring peace to this troubled area and to work closely with the Congress to assure the fullest possible, bipartisan coordination of our policies toward the region.

What I am asking for is prompt congressional approval for the full reprogramming of funds for key current economic and security programs so that the people of Central America can hold the line against externally-supported aggression. In addition, I am asking for prompt action on the supplemental request in these same areas to carry us through the current fiscal year, and for early and favorable congressional action on my requests for fiscal year 1984. Finally, I am asking that the bipartisan consensus, which last year acted on the trade and tax provisions of the Caribbean Basin Initiative in the House, again take the lead to move this vital proposal to the floor of both chambers. And, as I said before, the greatest share of these requests is targeted toward economic and humanitarian aid, not military.

What the Administration is asking for on behalf of freedom in Central America is so small, so minimal—considering what is at stake. The total amount requested for aid to all of Central America in 1984 is about $600 million; that is less than one-tenth of what Americans will spend this year on coin-operated video games.

In summation, I say to you that tonight there can be no question: The national security of all the Americas is at stake in Central America. If we cannot defend ourselves there, we cannot expect to prevail elsewhere. Our credibility would collapse, our alliances would crumble, and the safety of our homeland would be put at jeopardy.

We have a vital interest, a moral duty, and a solemn responsibility.

This is not a partisan issue. It is a question of our meeting our moral responsibility to ourselves, our friends, and our posterity. It is a duty that falls to all of us—the President, the Congress, and the people. We must perform it together. Who among us would wish to bear responsibility for failing to meet our shared obligation?

RONALD REAGAN.

THE WHITE HOUSE, *April 27, 1983.*

○

98th Congress, 1st Session - - - - - - - - House Document No. 98-54

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE FOR THE U.S. DISTRICT COURTS

COMMUNICATION

FROM

THE CHIEF JUSTICE OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE RULES OF CIVIL PROCEDURE FOR THE UNITED STATES DISTRICT COURTS, ADOPTED BY THE SUPREME COURT PURSUANT TO 28 U.S.C. 2072, TOGETHER WITH THE REPORT OF THE JUDICIAL CONFERENCE OF THE UNITED STATES SUBMITTED TO THE COURT PURSUANT TO 28 U.S.C. 331

APRIL 28, 1983.—Referred to the Committee on the Judiciary and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

11-011 O WASHINGTON: 1983

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., April 28, 1983.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: By direction of the Supreme Court of the United States, I have the honor to submit to the Congress amendments to the Federal Rules of Civil Procedure which have been adopted by the Supreme Court pursuant to title 28, United States Code, section 2072.

Accompanying these rules is an excerpt from the report of the Judicial Conference of the United States containing the advisory committee notes submitted to the Court for its consideration pursuant to title 28, United States Code, section 331.

Respectfully,

WARREN E. BURGER.

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SUPREME COURT OF THE UNITED STATES

April 28, 1983

ORDERED:

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein new Rules 26(g), 53(f), 72 through 76 and new Official Forms 33 and 34, and amendments to Rules 6(b), 7(b), 11, 16, 26(a) and (b), 52(a), 53(a), (b) and (c) and 67, as hereinafter set forth:

[See infra., pp. ____ ____ ____.]

2. That the foregoing additions and amendments to the Federal Rules of Civil Procedure shall take effect on August 1, 1983 and shall govern all civil proceedings thereafter commenced and, insofar as just and practicable, in proceedings then pending.

3. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing additions to and changes in the Federal Rules of Civil Procedure in accordance with the provisions of Section 2072 of Title 28, United States Code.

SUPREME COURT OF THE UNITED STATES

April 28, 1983

ORDERED.

1. That the Federal Rules of Civil Procedure be, and they hereby are, amended by including therein new rules 16(c), 31(2), 72 through 76 and new official forms 33 and 34, and amendments to Rules 6(b), 7(b), 11, 18, 26(a) and (b), 53(a), 33(a), (b) and (c) and 67, as hereinafter set forth:

[See infra, pp. ____ - ____.]

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(1)

AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE

Rule 6. Time

* * *

(b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), 60(b), and 74(a), except to the extent and under the conditions stated in them.

* * *

Rule 7. Pleadings Allowed; Form of Motions

* * *

(b) MOTIONS AND OTHER PAPERS

* * *

(2) The rules applicable to captions and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

* * *

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred

because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

Rule 16. Pretrial Conferences; Scheduling; Management

(a) PRETRIAL CONFERENCES; OBJECTIVES. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

(b) SCHEDULING AND PLANNING. Except in categories of actions exempted by district court rule as inappropriate, the judge, or a magistrate when authorized by district court rule, shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(5) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in no event more than 120 days after filing of the complaint. A schedule shall not be modified except by leave of the judge or a magistrate when authorized by district court rule upon a showing of good cause.

(c) SUBJECTS TO BE DISCUSSED AT PRETRIAL CONFERENCES. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5) the identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6) the advisability of referring matters to a magistrate or master;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unusual proof problems; and

(11) such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) FINAL PRETRIAL CONFERENCE. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) PRETRIAL ORDERS. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) SANCTIONS. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or his own initiative, may make such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing him or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

Rule 26. General Provisions Governing Discovery

(a) DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land or other property, for inspection and other purposes; physical and mental examinations; and requests for admission.

(b) DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

* * *

(g) SIGNING OF DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction,

which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

Rule 52. Findings by the Court

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

• • •

Rule 53. Masters

(a) APPOINTMENT AND COMPENSATION. The court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct; provided that this provision for compensation shall not apply when a United States magistrate is designated to serve as a master pursuant to Title 28, U.S.C. § 636(b)(2). The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) REFERENCE. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it. Upon the consent of the parties, a magistrate may be designated to serve as a special master without regard to the provisions of this subdivision.

(c) POWERS. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in the Federal Rules of Evidence for a court sitting without a jury.

* * *

(f) A magistrate is subject to this rule only when the order referring a matter to the magistrate expressly provides that the reference is made under this Rule.

Rule 67. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of Title 28, U.S.C., §§ 2041, and 2042; the Act of June 26, 1934, c. 756, § 23, as amended (48 Stat. 1236, 58 Stat. 845), U.S.C., Title 31, § 725v; or any like statute. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

Rule 72. Magistrates; Pretrial Matters

(a) NONDISPOSITIVE MATTERS. A magistrate to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter. The district judge to whom the case is assigned shall consider objections made by the parties, provided they are served and filed within 10 days after the entry of the order, and shall modify or set aside any portion of the magistrate's order found to be clearly erroneous or contrary to law.

(b) DISPOSITIVE MOTIONS AND PRISONER PETITIONS. A magistrate assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate, and a record may be made of such other proceedings as the magistrate deems necessary. The magistrate shall enter into the record a recommendation for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate deems sufficient, unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate with instructions.

Rule 73. Magistrates; Trial by Consent and Appeal Options

(a) POWERS; PROCEDURE. When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate may exercise the authority provided by Title 28, U.S.C. § 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in accordance with the requirements of Title 28, U.S.C. § 636(c)(7).

(b) CONSENT. When a magistrate has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a magistrate of civil jurisdiction over the case, as authorized by Title 28, U.S.C. § 636(c). If, within the period specified by local rule, the parties agree to a magistrate's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

No district judge, magistrate, or other court official shall attempt to persuade or induce a party to consent to a reference of a civil matter to a magistrate under this rule, nor shall a district judge or magistrate be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate.

The district judge, for good cause shown on his own motion or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate under this subdivision.

(c) NORMAL APPEAL ROUTE. In accordance with Title 28, U.S.C. § 636(c)(3), unless the parties otherwise agree to the optional appeal route provided for in subdivision (d) of this rule, appeal from a judgment entered upon direction of a magistrate in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.

(d) OPTIONAL APPEAL ROUTE. In accordance with Title 28, U.S.C. § 636(c)(4), at the time of reference to a magistrate, the parties may consent to appeal on the record to a judge of the district court and thereafter, by petition only, to the court of appeals.

Rule 74. Method of Appeal from Magistrate to District Judge under Title 28, U.S.C. § 636(c)(4) and Rule 73(d)

(a) WHEN TAKEN. When the parties have elected under Rule 73(d) to proceed by appeal to a district judge from an appealable decision made by a magistrate under the consent provisions of Title 28, U.S.C. § 636(c)(4), an appeal may be taken from the decision of a magistrate by filing with the clerk of the district court a notice of appeal within 30 days of the date of entry of the judgment appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days thereafter, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by the timely filing of any of the following motions with the magistrate by any party, and the full time for appeal from the judgment entered by the magistrate commences to run anew from entry of any of the following orders: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

An interlocutory decision or order by a magistrate which, if made by a judge of the district court, could be appealed under any provision of law, may be appealed to a judge of the district court by filing a notice of appeal within 15 days after entry of the decision or order, provided the parties have elected to appeal to a judge of the district court under Rule 73(d). An appeal of such interlocutory decision or order shall not stay the proceedings before the magistrate unless the magistrate or judge shall so order.

Upon a showing of excusable neglect, the magistrate may extend the time for filing a notice of appeal upon motion filed not later than 20 days after the expiration of the time otherwise prescribed by this rule.

(b) NOTICE OF APPEAL; SERVICE. The notice of appeal shall specify the party or parties taking the appeal, designate the judgment, order or part thereof appealed from, and state that the

appeal is to a judge of the district court. The clerk shall mail copies of the notice to all other parties and note the date of mailing in the civil docket.

(c) STAY PENDING APPEAL. Upon a showing that the magistrate has refused or otherwise failed to stay the judgment pending appeal to the district judge under Rule 73(d), the appellant may make application for a stay to the district judge with reasonable notice to all parties. The stay may be conditioned upon the filing in the district court of a bond or other appropriate security.

(d) DISMISSAL. For failure to comply with these rules or any local rule or order, the district judge may take such action as is deemed appropriate, including dismissal of the appeal. The district judge also may dismiss the appeal upon the filing of a stipulation signed by all parties, or upon motion and notice by the appellant.

Rule 75. Proceedings on Appeal from Magistrate to District Judge under Rule 73(d)

(a) APPLICABILITY. In proceedings under Title 28, U.S.C. § 636(c), when the parties have previously elected under Rule 73(d) to appeal to a district judge rather than to the court of appeals, this rule shall govern the proceedings on appeal.

(b) RECORD ON APPEAL.

(1) Composition. The original papers and exhibits filed with the clerk of the district court, the transcript of the proceedings, if any, and the docket entries shall constitute the record on appeal. In lieu of this record the parties, within 10

days after the filing of the notice of appeal, may file a joint statement of the case showing how the issues presented by the appeal arose and were decided by the magistrate, and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented.

(2) Transcript. Within 10 days after filing the notice of appeal the appellant shall make arrangements for the production of a transcript of such parts of the proceedings as he deems necessary. Unless the entire transcript is to be included, the appellant, within the time provided above, shall serve on the appellee and file with the court a description of the parts of the transcript which he intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, within 10 days after the service of the statement of the appellant, he shall serve on the appellant and file with the court a designation of additional parts to be included. The appellant shall promptly make arrangements for the inclusion of all such parts unless the magistrate, upon motion, exempts the appellant from providing certain parts, in which case the appellee may provide for their transcription.

(3) Statement in Lieu of Transcript. If no record of the proceedings is available for transcription, the parties shall, within 10 days after the filing of the notice of appeal, file a statement of the evidence from the best available means to be submitted in lieu of the transcript. If the parties cannot agree they shall submit a statement of their differences to the magistrate for settlement.

(c) TIME FOR FILING BRIEFS. Unless a local rule or court order otherwise provides, the following time limits for filing briefs shall apply.

(1) The appellant shall serve and file his brief within 20 days after the filing of the transcript, statement of the case, or statement of the evidence.

(2) The appellee shall serve and file his brief within 20 days after service of the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee.

(4) If the appellee has filed a cross-appeal, he may file a reply brief limited to the issues on the cross-appeal within 10 days after service of the reply brief of the appellant.

(d) LENGTH AND FORM OF BRIEFS. Briefs may be typewritten. The length and form of briefs shall be governed by local rule.

(e) ORAL ARGUMENT. The opportunity for the parties to be heard on oral argument shall be governed by local rule.

Rule 76. Judgment of the District Judge on the Appeal under Rule 73(d) and Costs

(a) ENTRY OF JUDGMENT. When the parties have elected under Rule 73(d) to appeal from a judgment of the magistrate to a district judge, the clerk shall prepare, sign, and enter judgment in accordance with the order or decision of the district judge following an appeal from a judgment of the magistrate, unless the district judge directs otherwise. The clerk shall mail to all parties a copy of the order or decision of the district judge.

(b) STAY OF JUDGMENTS. The decision of the district judge shall be stayed for 10 days during which time a party may petition the district judge for rehearing, and a timely petition shall stay the decision of the district judge pending disposition of a petition for rehearing. Upon the motion of a party, the decision of the district judge may be stayed in order to allow a party to petition the court of appeals for leave to appeal.

(c) COSTS. Except as otherwise provided by law or ordered by the district judge, costs shall be taxed against the losing party; if a judgment of the magistrate is affirmed in part or reversed in part, or is vacated, costs shall be allowed only as ordered by the district judge. The cost of the transcript, if necessary for the determination of the appeal, and the premiums paid for bonds to preserve rights pending appeal shall be taxed as costs by the clerk.

APPENDIX OF FORMS

* * *

Form 33.

NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE AND APPEAL OPTION

In accordance with the provisions of Title 28, U.S.C. § 636(c), you are hereby notified that the United States magistrates of this district court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case including a jury or nonjury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States magistrate must be entirely voluntary. Only if all the parties to the case consent to the reference to a magistrate will either the judge or magistrate to whom the case has been assigned be informed of your decision.

An appeal from a judgment entered by a magistrate may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a magistrate may be taken directly to a district judge. Cases in which an appeal is taken to a district judge may be reviewed by the United States court of appeals for this judicial circuit only by way of petition for leave to appeal.

Copies of the Form for the "Consent to Proceed Before a United States Magistrate" and "Election of Appeal to a District Judge" are available from the clerk of the court.

Form 34.

CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE,
ELECTION OF APPEAL TO DISTRICT JUDGE,
AND ORDER OF REFERENCE

UNITED STATES DISTRICT COURT FOR THE _____

DISTRICT OF _____

----------x

Plaintiff,

vs.

Docket No. _____

Defendant.

----------x

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of Title 28, U.S.C. § 636(c), the parties to the above-captioned civil matter hereby voluntarily waive their rights to proceed before a judge of the United States district court and consent to have a United States magistrate conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment.

_____

_____

Date

ELECTION OF APPEAL TO DISTRICT JUDGE

[Do not execute this portion of the Consent Form if the parties desire that the appeal lie directly to the court of appeals.]

In accordance with the provisions of Title 28, U.S.C. § 636(c)(4), the parties elect to take any appeal in this case to a district judge.

_____

_____

Date

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate _____ for all further proceedings and the entry of judgment in accordance with Title 28, U.S.C. § 636(c) and the foregoing consent of the parties.

_____
U.S. District Judge

Note: Return this form to the Clerk of the Court only if all parties have consented to proceed before a magistrate.

EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

III. Federal Rules of Civil Procedure

The Advisory Committee on the Federal Rules of Civil Procedure has submitted to your Committee proposed amendments to Rules 6(b), 7(b), 11, 16, 26(a) and (b), 52(a), 53(a), (b) and (c) and 67 of the Federal Rules of Civil Procedure; new Rules 26(g), 53(f) and 72 through 76; and new Official Forms 33 and 34. These proposed new rules and forms and the amendments to existing rules are set out in Appendix C and are accompanied by Advisory Committee notes explaining their purpose and intent. A separate report from the Chairman of the Advisory Committee summarizes the Committee's work.

These proposals are designed to reduce discovery abuse and the abuse of process, to reform the procedures for the conduct of pretrial conferences and for the scheduling and management of litigation by district judges, and to conform the rules to the jurisdictional provisions of the Federal Magistrates Act of 1979.

Your Committee recommends that these proposed amendments, new rules and forms be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

EXCERPT FROM THE
REPORT OF THE JUDICIAL CONFERENCE
COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND
MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

[illegible] Rules of Civil Procedure

The Advisory Committee on the Federal Rules of Civil Procedure has submitted to this Committee proposed amendments to Rules 6(b), 7(b), 11, 16, 19(a), and 56, Title 28, U.S.C., 69 and 6(e) and 47 of the Federal Rules of Civil Procedure for the District Courts (Rules 26(g), 30(f) and 72 through 76) and new Official Forms 31 and 32. These proposed new rules and forms and the amendments [illegible] are set out in Appendix C and are accompanied by [illegible] the rules explaining their purpose and intent. A separate report from the Chairman of the Advisory Committee summarizes the Committee's work.

These proposals are designed to reduce discovery abuse and the [illegible] process, to relieve the procedures for the conduct of pretrial conferences and for the scheduling and management of litigation by district judges, and to conform the rules to the jurisdictional provisions of the Federal Magistrates Act of 1979.

Your Committee recommends that these proposed amendments, [illegible] and forms be approved by the Conference and transmitted to the Supreme Court, for its consideration with a recommendation that they be [illegible] by the Court and transmitted to the Congress pursuant to law.

APPENDIX C

March 9, 1982

TO: Judge Edward T. Gignoux, Chairman, and
Members of the Standing Committee on
Rules of Practice and Procedure

FROM: Walter R. Mansfield, Chairman,
Advisory Committee on Civil Rules

I have the honor of submitting herewith our Committee's final draft of proposed amendments of Rules 6, 7, 11, 16, 26, 52, 53, 67 and 72-76 of the Federal Rules of Civil Procedure and their Advisory Notes.

As indicated in our June 20, 1981, submission of an earlier draft of these amendments for public comment, the purposes of these proposals are as follows:

(1) The amendments of Rules 7 and 11 are designed to minimize abuse in the signing of pleadings, motions and other papers through a more precise definition of the standards to be met by the signing party or attorney and a requirement that sanctions be imposed for violation of these standards.

(2) Rule 16, which deals with pre-trial conferences and orders, has been revised to insure closer and more effective judicial scheduling, management and control of litigation as a means of avoiding unnecessary delay and expense.

(3) The amendments of Rule 26 are aimed at protecting against excessive discovery and evasion of reasonable discovery demands. As amended Rule 26(b) would require the court, when certain conditions exist, to limit the frequency and extent of use of discovery methods. Rule 26(g) would impose upon each party or attorney the duty, before proceeding with respect to any discovery matter, to make a reasonable inquiry and to certify that certain standards have been met. A violation of this duty would result in the imposition of sanctions.

(4) The Rule 52(a) proposal makes clear that a trial judge may make oral recorded findings and conclusions in nonjury trials.

(5) The Rule 67 amendment would facilitate deposits of money in court by broadening parties' power to do so and requiring that deposited funds be invested in interest bearing accounts or instruments.

(6) The amendments of Rules 6, 53 and 72-76 seek to provide procedures that will conform to and implement the 1979 amendments to the Federal Magistrates Act.

As a result of wide circulation of the earlier draft in June 1981 to the bench, bar and public and the holding of public hearings in Washington in October 1981 and in Los Angeles in November 1981, our Committee received numerous oral and written comments and suggestions from judges, lawyers, professors of law, bar associations, committees and others with respect to the amendments. A substantial majority favored the proposals, with certain reservations and qualifications. After a careful review and analysis our Committee recommends their adoption as modified by the following changes contained in the attached redraft:

(1) Rules 7 and 11:

Instead of repeating the proposed certification standards and sanctions provisions in both rules, as was done in the original draft, the attached draft sets them forth once in Rule 11, which is incorporated by reference in Rule 7. The heading of Rule 11 has been amplified to refer to "Motions and Other Papers" and Rule 7(b)(3) revised to require that "All motions shall be signed in accordance with Rule 11." The Advisory Committee Note to Rule 11 has likewise been revised to make clear that the rule applies to motions and other papers. This revision eliminates unnecessary duplicative verbiage found in the originally-submitted rules and accompanying notes.

The certification language of Rule 11 has been changed slightly from the original June 1981 proposal by eliminating the word "primarily" (as used in the original draft, p. 6, lines 16-18) so that a pleader or movant would now certify that the paper is "not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of the litigation." The purpose of the revision is to eliminate any ambiguity arising out of the use of the word "primarily."

In addition, the draft has been revised to provide that an unsigned pleading, motion or other paper, instead of automatically being deemed ineffective as originally proposed, will be stricken unless signed promptly after the omission is called to the attention of the pleader or movant. The aim is to avoid unnecessary harshness in the case of a party who may have inadvertently failed to sign. Our Advisory Committee Note has also been amplified to make clear, in response to some comments, that the rule does not require a party or attorney to disclose privileged communications or work product.

In all other material respects the proposed amendments of Rules 7 and 11 remained unchanged. Although some persons opposed the proposals as unnecessary, as productive of abuse or of wasteful satellite litigation, as

likely to be treated as mere formalities, and as invading the province of the attorney-client privilege, the majority was of the view, either expressly or impliedly, that more precise standards, including a duty of reasonable inquiry, would reduce frivolous claims, defenses or motions by leading litigants to stop, think and investigate more carefully before serving and filing papers. Mandating sanctions, such as expenses, upon the violator is viewed as a healthy deterrent against costly meritless maneuvers and worth the risk of satellite litigation.

(2) Rule 16:

As originally submitted this rule gave the erroneous impression to a few that a pre-trial conference for the purpose of formulating a scheduling order was mandated, even though the accompanying note stated that the judge could for that purpose communicate with the parties by telephone, mail or other means. In order to remove any misapprehension Rule 16(b) of the proposed draft has been changed to state that the court shall issue a scheduling order after consulting with the parties by a "scheduling conference, telephone, mail, or other suitable means."

As originally submitted, Rule 16(b) provided that only a "judge" (as distinguished from the "court," which could include a magistrate) may issue a scheduling order in each case. Based on empirical studies our Committee is satisfied that early intervention and management by a judge is important to the prompt and efficient movement and disposition of litigation on his calendar, since only an Article III judge possesses the crucial powers necessary to insure that a case will proceed rapidly toward settlement or trial, including the power, with knowledge of his trial calendar, to fix deadlines for motions, completion of discovery and trial, as well as the power to dismiss meritless claims, grant summary judgment, assess expenses or other sanctions for violation of his orders and make advance rulings on the admissibility of evidence. However, our Committee also recognizes that in some districts it may be impractical or difficult for the judge personally to handle the scheduling of every case on his calendar. Accordingly, Rule 16(b) has been revised to provide that "the judge, or a magistrate when authorized by district court rule," shall enter the scheduling order.

The requirement of the original draft of Rule 16(b) that a scheduling order issue within 90 days after filing of the complaint has been extended to 120 days in recognition that in some cases answers may be delayed, making it difficult or impractical to issue a scheduling order within the 90-day period.

Except for the foregoing and a few less important changes, the draft of proposed Rule 16 as submitted to the public remains substantially the same. The overwhelming majority of those commenting on the proposal either expressly favored the new rule as helpful in providing for essential

judicial management of litigation as a means of reducing expense and delay or indicated that they would favor the substance of the proposal if certain changes, including those adopted in the attached draft, were made.

(3) Rule 26:

In response to suggestions we have slightly revised the standards in Rule 26(b)(1)(iii), which provides for court limitation of discovery upon certain conditions, to make them as far as practicable the same as the discovery certification standards set forth in Rule 26(g)(3). Moreover, since a violation of the latter standards calls for mandatory imposition of sanctions, the amendment of Rule 26(b) has accordingly been changed to require the court, upon finding the equivalent of such a violation, to limit discovery rather than to act in its discretion.

Rule 26(g)(2), which prescribes certain discovery certification standards, has been revised to adopt some of the same standards as those provided in Rule 11 for certification of pleadings and motions, eliminating use of the word "primarily."

Rule 26(g) has also been revised to provide, in lieu of our earlier draft's provision that an unsigned request, response or objection shall be deemed ineffective, that it shall be stricken unless signed promptly after the omission of the signature is called to the party's attention. This accords with our treatment of the same matter in Rule 11.

Our Committee's Advisory Note has been amplified to make clear that the amended rule does not require a party or attorney to disclose privileged communications or work product.

Except for minor additional changes the proposed amendments to Rule 26 remain substantially the same as those sent out in June 1981. In our view they now reflect changes that are acceptable to most of the bench and bar. Our decision not to make certain requested changes was made only after careful review and appraisal of all relevant considerations.

(4) Rule 67:

In response to comments our Committee has eliminated from its June 1981 proposed amendments provisions in the last two sentences of that draft which would relieve a depositing party from liability for interest imposed by statute or rule and would leave contract interest unaffected by a deposit except for crediting interest earned on deposited money toward that liability. The Advisory Committee Note has been redrafted to reflect these changes. Our Committee is persuaded that these substantive issues should be left for judicial resolution rather than made the subject of a rule.

The attached draft retains the provision authorizing any party, including a party claiming an interest in the funds, to deposit them with the court and, as amended, the redraft requires that deposited funds be placed in an interest-bearing account or invested in an interest-bearing instrument.

(5) Rules 6, 52, 53, 72-76:

The draft amendments of these rules sent out in June 1961 remain unchanged except for a minor amendment of Rule 74(c), dealing with a stay pending appeal from a magistrate's decision to a district judge, which has been changed to provide that the stay may be conditioned upon the filing of a bond or other appropriate security in the district court.

We believe that the attached amendments, if adopted, will serve to reduce unnecessary delay and needless expense, as well as to increase efficiency, in the administration of justice.

Respectfully submitted,

The Advisory Committee on
Federal Civil Rules

By Walter R. Mansfield
Chairman

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CIVIL PROCEDURE*

Rule 6. Time

* * *

(b) ENLARGEMENT. When by these rules or by a notice given thereunder or by order of court an act is required or allowed to be done at or within a specified time, the court for cause shown may at any time in its discretion (1) with or without motion or notice order the period enlarged if request therefor is made before the expiration of the period originally prescribed or as extended by a previous order, or (2) upon motion made after the expiration of the specified period permit the act to be done where the failure to act was the result of excusable neglect; but it may not extend the time for taking any action under Rules 50(b) and (c)(2), 52(b), 59(b), (d) and (e), 60(b), and 74(a), except to the extent and under the conditions stated in them.

* * *

ADVISORY COMMITTEE NOTE

Subdivision (b). The amendment confers finality upon the judgments of magistrates by foreclosing enlargement of the time for appeal except as provided in new Rule 74(a) (20 day period for demonstration of excusable neglect).

*New matter is underscored; matter to be omitted is lined through.

Rule 7. Pleadings Allowed; Form of Motions

* * *

(b) MOTIONS AND OTHER PAPERS

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(2) The rules applicable to captions, ~~signing,~~ and other matters of form of pleadings apply to all motions and other papers provided for by these rules.

(3) All motions shall be signed in accordance with Rule 11.

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ADVISORY COMMITTEE NOTE

One of the reasons sanctions against improper motion practice have been employed infrequently is the lack of clarity of Rule 7. That rule has stated only generally that the pleading requirements relating to captions, signing, and other matters of form also apply to motions and other papers. The addition of Rule 7(b)(3) makes explicit the applicability of the signing requirement and the sanctions of Rule 11, which have been amplified.

Rule 11. Signing of Pleadings, Motions, and Other Papers; Sanctions

Every pleading, motion, and other paper of a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign his pleading, motion, or other paper and state his address. Except when otherwise specifically provided by rule or statute, pleadings need not be verified or accompanied by affidavit. The rule in equity that the averments of an answer under oath must be overcome by the testimony of two witnesses or of one witness sustained by

corroborating circumstances is abolished. The signature of an attorney or party constitutes a certificate by him that he has read the pleading, motion, or other paper; that to the best of his knowledge, information, and belief ~~there is good ground to support it; and that it is not interposed for delay~~ formed after reasonable inquiry it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law, and that it is not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation. If a pleading, motion, or other paper is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the pleader or movant. ~~or is signed with intent to defeat the purpose of this rule; it may be stricken as sham and false and the action may proceed as though the pleading had not been served. For a wilful violation of this rule an attorney may be subjected to appropriate disciplinary action. Similar action may be taken if scandalous or indecent matter is inserted.~~ If a pleading, motion, or other paper is signed in violation of this rule, the court, upon motion or upon its own initiative, shall impose upon the person who signed it, a represented party, or both, an appropriate sanction, which may include an order to pay to the other party or parties the amount of the reasonable expenses incurred because of the filing of the pleading, motion, or other paper, including a reasonable attorney's fee.

ADVISORY COMMITTEE NOTE

Since its original promulgation, Rule 11 has provided for the striking of pleadings and the imposition of disciplinary sanctions to check abuses in the signing of pleadings. Its provisions have always applied to motions and other papers by virtue of incorporation by reference in Rule 7(b)(2). The amendment and the addition of Rule 7(b)(3) expressly confirms this applicability.

Experience shows that in practice Rule 11 has not been effective in deterring abuses. See 6 Wright & Miller, Federal Practice and Procedure: Civil § 1334 (1971). There has been considerable confusion as to (1) the circumstances that should trigger striking a pleading or motion or taking disciplinary action, (2) the standard of conduct expected of attorneys who sign pleadings and motions, and (3) the range of available and appropriate sanctions. See Rodes, Ripple & Mooney, Sanctions Imposable for Violations of the Federal Rules of Civil Procedure 64-65, Federal Judicial Center (1981). The new language is intended to reduce the reluctance of courts to impose sanctions, see Moore, Federal Practice ¶7.05, at 1547, by emphasizing the responsibilities of the attorney and reenforcing those obligations by the imposition of sanctions.

The amended rule attempts to deal with the problem by building upon and expanding the equitable doctrine permitting the court to award expenses, including attorney's fees, to a litigant whose opponent acts in bad faith in instituting or conducting litigation. See, e.g., Roadway Express, Inc. v. Piper, 447 U.S. 752, (1980); Hall v. Cole, 412 U.S. 1, 5 (1973). Greater attention by the district courts to pleading and motion abuses and the imposition of sanctions when appropriate, should discourage dilatory or abusive tactics and help to streamline the litigation process by lessening frivolous claims or defenses.

The expanded nature of the lawyer's certification in the fifth sentence of amended Rule 11 recognizes that the litigation process may be abused for purposes other than delay. See, e.g., Browning Debenture Holders' Committee v. DASA Corp., 560 F.2d 1078 (2d Cir. 1977).

The words "good ground to support" the pleading in the original rule were interpreted to have both factual and legal elements. See, e.g., Heart Disease Research Foundation v. General Motors Corp., 15 Fed. R. Serv. 2d 1517, 1519 (S.D.N.Y. 1972). They have been replaced by a standard of conduct that is more focused.

The new language stresses the need for some prefiling inquiry into both the facts and the law to satisfy the affirmative duty imposed by the rule. The standard is one of reasonableness under the circumstances. See Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass'n, 365 F.Supp. 975 (E.D. Pa. 1973). This standard is more stringent than the original good-faith

formula and thus it is expected that a greater range of circumstances will trigger its violation. See Nemeroff v. Abelson, 620 F.2d 339 (2d Cir. 1980).

The rule is not intended to chill an attorney's enthusiasm or creativity in pursuing factual or legal theories. The court is expected to avoid using the wisdom of hindsight and should test the signer's conduct by inquiring what was reasonable to believe at the time the pleading, motion, or other paper was submitted. Thus, what constitutes a reasonable inquiry may depend on such factors as how much time for investigation was available to the signer; whether he had to rely on a client for information as to the facts underlying the pleading, motion, or other paper; whether the pleading, motion, or other paper was based on a plausible view of the law; or whether he depended on forwarding counsel or another member of the bar.

The rule does not require a party or an attorney to disclose privileged communications or work product in order to show that the signing of the pleading, motion, or other paper is substantially justified. The provisions of Rule 26(c), including appropriate orders after in camera inspection by the court, remain available to protect a party claiming privilege or work product protection.

Amended Rule 11 continues to apply to anyone who signs a pleading, motion, or other paper. Although the standard is the same for unrepresented parties, who are obliged themselves to sign the pleadings, the court has sufficient discretion to take account of the special circumstances that often arise in pro se situations. See Haines v. Kerner, 404 U.S. 519 (1972).

The provision in the original rule for striking pleadings and motions as sham and false has been deleted. The passage has rarely been utilized, and decisions thereunder have tended to confuse the issue of attorney honesty with the merits of the action. See generally Risinger, Honesty in Pleading and its Enforcement: Some "Striking" Problems with Fed. R. Civ. P. 11, 61 Minn.L.Rev. 1 (1976). Motions under this provision generally present issues better dealt with under Rules 8, 12, or 56. See Murchison v. Kirby, 27 F.R.D. 14 (S.D.N.Y. 1961); 5 Wright & Miller, Federal Practice and Procedure: Civil § 1334 (1969).

The former reference to the inclusion of scandalous or indecent matter, which is itself strong indication that an improper purpose underlies the pleading, motion, or other paper, also has been deleted as unnecessary. Such matter may be stricken under Rule 12(f) as well as dealt with under the more general language of amended Rule 11.

The text of the amended rule seeks to dispel apprehensions that efforts to obtain enforcement will be fruitless by insuring that the rule will be applied when properly invoked. The word "sanctions" in the caption, for example, stresses a deterrent orientation in dealing with improper

pleadings, motions or other papers. This corresponds to the approach in imposing sanctions for discovery abuses. See National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639 (1976) (per curiam). And the words "shall impose" in the last sentence focus the court's attention on the need to impose sanctions for pleading and motion abuses. The court, however, retains the necessary flexibility to deal appropriately with violations of the rule. It has discretion to tailor sanctions to the particular facts of the case, with which it should be well acquainted.

The reference in the former text to wilfulness as a prerequisite to disciplinary action has been deleted. However, in considering the nature and severity of the sanctions to be imposed, the court should take account of the state of the attorney's or party's actual or presumed knowledge when the pleading or other paper was signed. Thus, for example, when a party is not represented by counsel, the absence of legal advice is an appropriate factor to be considered.

Courts currently appear to believe they may impose sanctions on their own motion. See North American Trading Corp. v. Zale Corp., 72 F.R.D. 293 (S.D.N.Y. 1979). Authority to do so has been made explicit in order to overcome the traditional reluctance of courts to intervene unless requested by one of the parties. The detection and punishment of a violation of the signing requirement, encouraged by the amended rule, is part of the court's responsibility for securing the system's effective operation.

If the duty imposed by the rule is violated, the court should have the discretion to impose sanctions on either the attorney, the party the signing attorney represents, or both, or on an unrepresented party who signed the pleading, and the new rule so provides. Although Rule 11 has been silent on the point, courts have claimed the power to impose sanctions on an attorney personally, either by imposing costs or employing the contempt technique. See 5 Wright & Miller, Federal Practice and Procedure: Civil § 1334 (1969); 2A Moore, Federal Practice ¶ 11.02, at 2104 n.8. This power has been used infrequently. The amended rule should eliminate any doubt as to the propriety of assessing sanctions against the attorney.

Even though it is the attorney whose signature violates the rule, it may be appropriate under the circumstances of the case to impose a sanction on the client. See Browning Debenture Holders' Committee v. DASA Corp., supra. This modification brings Rule 11 in line with practice under Rule 37, which allows sanctions for abuses during discovery to be imposed upon the party, the attorney, or both.

A party seeking sanctions should give notice to the court and the offending party promptly upon discovering a basis for doing so. The time when sanctions are to be imposed rests in the discretion of the trial judge. However, it is anticipated that in the case of pleadings the sanctions issue under Rule 11 normally will be determined at the end of the litigation, and

in the case of motions at the time when the motion is decided or shortly thereafter. The procedure obviously must comport with due process requirements. The particular format to be followed should depend on the circumstances of the situation and the severity of the sanction under consideration. In many situations the judge's participation in the proceedings provides him with full knowledge of the relevant facts and little further inquiry will be necessary.

To assure that the efficiencies achieved through more effective operation of the pleading regimen will not be offset by the cost of satellite litigation over the imposition of sanctions, the court must to the extent possible limit the scope of sanction proceedings to the record. Thus, discovery should be conducted only by leave of the court, and then only in extraordinary circumstances.

Although the encompassing reference to "other papers" in new Rule 11 literally includes discovery papers, the certification requirement in that context is governed by proposed new Rule 26(g). Discovery motions, however, fall within the ambit of Rule 11.

Rule 16. Pretrial Conferences; Scheduling; Management
~~**Pre-Trial Procedure; Formulating Issues**~~

(a) PRETRIAL CONFERENCES; OBJECTIVES. In any action, the court may in its discretion direct the attorneys for the parties and any unrepresented parties to appear before it for a conference or conferences before trial ~~to consider~~ for such purposes as

(1) expediting the disposition of the action;

(2) establishing early and continuing control so that the case will not be protracted because of lack of management;

(3) discouraging wasteful pretrial activities;

(4) improving the quality of the trial through more thorough preparation, and;

(5) facilitating the settlement of the case.

(b) SCHEDULING AND PLANNING. Except in categories of actions exempted by district court rule as inappropriate, the judge, or a magistrate when authorized by district court rule, shall, after consulting with the attorneys for the parties and any unrepresented parties, by a scheduling conference, telephone, mail, or other suitable means, enter a scheduling order that limits the time

(1) to join other parties and to amend the pleadings;

(2) to file and hear motions; and

(3) to complete discovery.

The scheduling order also may include

(4) the date or dates for conferences before trial, a final pretrial conference, and trial; and

(5) any other matters appropriate in the circumstances of the case.

The order shall issue as soon as practicable but in no event more than 120 days after filing of the complaint. A schedule shall not be modified except by leave of the judge or a magistrate when authorized by district court rule upon a showing of good cause.

(c) SUBJECTS TO BE DISCUSSED AT PRETRIAL CONFERENCES. The participants at any conference under this rule may consider and take action with respect to

(1) the formulation and simplification of the issues, including the elimination of frivolous claims or defenses;

(2) the necessity or desirability of amendments to the pleadings;

(3) the possibility of obtaining admissions of fact and of documents which will avoid unnecessary proof, stipulations regarding the authenticity of documents, and advance rulings from the court on the admissibility of evidence;

(4) the avoidance of unnecessary proof and of cumulative evidence;

(5)~~(4)~~ the ~~limitation of the number of expert~~ identification of witnesses and documents, the need and schedule for filing and exchanging pretrial briefs, and the date or dates for further conferences and for trial;

(6)~~(5)~~ the advisability of a ~~preliminary reference of~~ referring ~~issues~~ matters to a magistrate or master ~~for findings to be used as evidence when the trial is to be by jury~~;

(7) the possibility of settlement or the use of extrajudicial procedures to resolve the dispute;

(8) the form and substance of the pretrial order;

(9) the disposition of pending motions;

(10) the need for adopting special procedures for managing potentially difficult or protracted actions that may involve complex issues, multiple parties, difficult legal questions, or unu ual proof problems; and

(11)~~(6)~~ such other matters as may aid in the disposition of the action.

At least one of the attorneys for each party participating in any conference before trial shall have authority to enter into stipulations and to make admissions regarding all matters that the participants may reasonably anticipate may be discussed.

(d) FINAL PRETRIAL CONFERENCE. Any final pretrial conference shall be held as close to the time of trial as reasonable under the circumstances. The participants at any such conference shall formulate a plan for trial, including a program for facilitating the admission of evidence. The conference shall be attended by at least one of the attorneys who will conduct the trial for each of the parties and by any unrepresented parties.

(e) PRETRIAL ORDERS. After any conference held pursuant to this rule, an order shall be entered reciting the action taken. This order shall control the subsequent course of the action unless modified by a subsequent order. The order following a final pretrial conference shall be modified only to prevent manifest injustice.

(f) SANCTIONS. If a party or party's attorney fails to obey a scheduling or pretrial order, or if no appearance is made on behalf of a party at a scheduling or pretrial conference, or if a party or party's attorney is substantially unprepared to participate in the conference, or if a party or party's attorney fails to participate in good faith, the judge, upon motion or his own initiative, may make

such orders with regard thereto as are just, and among others any of the orders provided in Rule 37(b)(2)(B), (C), (D). In lieu of or in addition to any other sanction, the judge shall require the party or the attorney representing him or both to pay the reasonable expenses incurred because of any noncompliance with this rule, including attorney's fees, unless the judge finds that the noncompliance was substantially justified or that other circumstances make an award of expenses unjust.

~~The court shall make an order which recites the action taken at the conference, the amendments allowed to the pleadings, and the agreements made by the parties as to any of the matters considered, and which limits the issues for trial to those not disposed of by admissions or agreements of counsel; and such order when entered controls the subsequent course of the action, unless modified at the trial to prevent manifest injustice. The court in its discretion may establish by rule a pretrial calendar on which actions may be placed for consideration as above provided and may either confine the calendar to jury actions or to non-jury actions or extend it to all actions.~~

ADVISORY COMMITTEE NOTE

Introduction

Rule 16 has not been amended since the Federal Rules were promulgated in 1938. In many respects, the rule has been a success. For example, there is evidence that pretrial conferences may improve the quality of justice rendered in the federal courts by sharpening the

preparation and presentation of cases, tending to eliminate trial surprise, and improving, as well as facilitating, the settlement process. See 6 Wright & Miller, Federal Practice and Procedure: Civil § 1522 (1971). However, in other respects particularly with regard to case management, the rule has not always been as helpful as it might have been. Thus there has been a widespread feeling that amendment is necessary to encourage pretrial management that meets the needs of modern litigation. See Report of the National Commission for the Review of Antitrust Laws and Procedures (1979).

Major criticism of Rule 16 has centered on the fact that its application can result in over-regulation of some cases and under-regulation of others. In simple, run-of-the-mill cases, attorneys have found pretrial requirements burdensome. It is claimed that over-administration leads to a series of mini-trials that result in a waste of an attorney's time and needless expense to a client. Pollack, Pretrial Procedures More Effectively Handled, 65 F.R.D. 475 (1974). This is especially likely to be true when pretrial proceedings occur long before trial. At the other end of the spectrum, the discretionary character of Rule 16 and its orientation toward a single conference late in the pretrial process has led to under-administration of complex or protracted cases. Without judicial guidance beginning shortly after institution, these cases often become mired in discovery.

Four sources of criticism of pretrial have been identified. First, conferences often are seen as a mere exchange of legalistic contentions without any real analysis of the particular case. Second, the result frequently is nothing but a formal agreement on minutiae. Third, the conferences are seen as unnecessary and time-consuming in cases that will be settled before trial. Fourth, the meetings can be ceremonial and ritualistic, having little effect on the trial and being of minimal value, particularly when the attorneys attending the sessions are not the ones who will try the case or lack authority to enter into binding stipulations. See generally McCargo v. Hedrick, 545 F.2d 393 (4th Cir. 1976); Pollack, Pretrial Procedures More Effectively Handled, 65 F.R.D. 475 (1974); Rosenberg, The Pretrial Conference and Effective Justice 45 (1964).

There also have been difficulties with the pretrial orders that issue following Rule 16 conferences. When an order is entered far in advance of trial, some issues may not be properly formulated. Counsel naturally are cautious and often try to preserve as many options as possible. If the judge who tries the case did not conduct the conference, he could find it difficult to determine exactly what was agreed to at the conference. But any insistence on a detailed order may be too burdensome, depending on the nature or posture of the case.

Given the significant changes in federal civil litigation since 1938 that are not reflected in Rule 16, it has been extensively rewritten and

expanded to meet the challenges of modern litigation. Empirical studies reveal that when a trial judge intervenes personally at an early stage to assume judicial control over a case and to schedule dates for completion by the parties of the principal pretrial steps, the case is disposed of by settlement or trial more efficiently and with less cost and delay than when the parties are left to their own devices. Flanders, Case Management and Court Management in United States District Courts 17, Federal Judicial Center (1977). Thus, the rule mandates a pretrial scheduling order. However, although scheduling and pretrial conferences are encouraged in appropriate cases, they are not mandated.

Discussion

Subdivision (a); Pretrial Conferences; Objectives. The amended rule makes scheduling and case management an express goal of pretrial procedure. This is done in Rule 16(a) by shifting the emphasis away from a conference focused solely on the trial and toward a process of judicial management that embraces the entire pretrial phase, especially motions and discovery. In addition, the amendment explicitly recognizes some of the objectives of pretrial conferences and the powers that many courts already have assumed. Rule 16 thus will be a more accurate reflection of actual practice.

Subdivision (b); Scheduling and Planning. The most significant change in Rule 16 is the mandatory scheduling order described in Rule 16(b), which is based in part on Wisconsin Civil Procedure Rule 802.10. The idea of scheduling orders is not new. It has been used by many federal courts. See, e.g., Southern District of Indiana, Local Rule 19.

Although a mandatory scheduling order encourages the court to become involved in case management early in the litigation, it represents a degree of judicial involvement that is not warranted in many cases. Thus, subdivision (b) permits each district court to promulgate a local rule under Rule 83 exempting certain categories of cases in which the burdens of scheduling orders exceed the administrative efficiencies that would be gained. See Eastern District of Virginia, Local Rule 12(1). Logical candidates for this treatment include social security disability matters, habeas corpus petitions, forfeitures, and reviews of certain administrative actions.

A scheduling conference may be requested either by the judge, a magistrate when authorized by district court rule, or a party within 120 days after the summons and complaint are filed. If a scheduling conference is not arranged within that time and the case is not exempted by local rule, a scheduling order must be issued under Rule 16(b), after some communication with the parties, which may be by telephone or mail rather than in person. The use of the term "judge" in subdivision (b) reflects the Advisory Committee's judgment that it is preferable that this task should

be handled by a district judge rather than a magistrate, except when the magistrate is acting under 28 U.S.C. § 636(c). While personal supervision by the trial judge is preferred, the rule, in recognition of the impracticality or difficulty of complying with such a requirement in some districts, authorizes a district by local rule to delegate the duties to a magistrate. In order to formulate a practicable scheduling order, the judge, or a magistrate when authorized by district court rule, and attorneys are required to develop a timetable for the matters listed in Rule 16(b)(1)-(3). As indicated in Rule 16(b)(4)-(5), the order may also deal with a wide range of other matters. The rule is phrased permissively as to clauses (4) and (5), however, because scheduling these items at an early point may not be feasible or appropriate. Even though subdivision (b) relates only to scheduling, there is no reason why some of the procedural matters listed in Rule 16(c) cannot be addressed at the same time, at least when a scheduling conference is held.

Item (1) assures that at some point both the parties and the pleadings will be fixed, by setting a time within which joinder of parties shall be completed and the pleadings amended.

Item (2) requires setting time limits for interposing various motions that otherwise might be used as stalling techniques.

Item (3) deals with the problem of procrastination and delay by attorneys in a context in which scheduling is especially important—discovery. Scheduling the completion of discovery can serve some of the same functions as the conference described in Rule 26(f).

Item (4) refers to setting dates for conferences and for trial. Scheduling multiple pretrial conferences may well be desirable if the case is complex and the court believes that a more elaborate pretrial structure, such as that described in the Manual for Complex Litigation, should be employed. On the other hand, only one pretrial conference may be necessary in an uncomplicated case.

As long as the case is not exempted by local rule, the court must issue a written scheduling order even if no scheduling conference is called. The order, like pretrial orders under the former rule and those under new Rule 16(c), normally will "control the subsequent course of the action." See Rule 16(e). After consultation with the attorneys for the parties and any unrepresented parties—a formal motion is not necessary—the court may modify the schedule on a showing of good cause if it cannot reasonably be met despite the diligence of the party seeking the extension. Since the scheduling order is entered early in the litigation, this standard seems more appropriate than a "manifest injustice" or "substantial hardship" test. Otherwise, a fear that extensions will not be granted may encourage counsel to request the longest possible periods for completing pleading, joinder, and discovery. Moreover, changes in the court's calendar

sometimes will oblige the judge or magistrate when authorized by district court rule to modify the scheduling order.

The district courts undoubtedly will develop several prototype scheduling orders for different types of cases. In addition, when no formal conference is held, the court may obtain scheduling information by telephone, mail, or otherwise. In many instances this will result in a scheduling order better suited to the individual case than a standard order, without taking the time that would be required by a formal conference.

Rule 16(b) assures that the judge will take some early control over the litigation, even when its character does not warrant holding a scheduling conference. Despite the fact that the process of preparing a scheduling order does not always bring the attorneys and judge together, the fixing of time limits serves

> to stimulate litigants to narrow the areas of inquiry and advocacy to those they believe are truly relevant and material. Time limits not only compress the amount of time for litigation, they should also reduce the amount of resources invested in litigation. Litigants are forced to establish discovery priorities and thus to do the most important work first.

Report of the National Commission for the Review of Antitrust Laws and Procedures 28 (1979).

Thus, except in exempted cases, the judge or a magistrate when authorized by district court rule will have taken some action in every case within 120 days after the complaint is filed that notifies the attorneys that the case will be moving toward trial. Subdivision (b) is reenforced by subdivision (f), which makes it clear that the sanctions for violating a scheduling order are the same as those for violating a pretrial order.

Subdivision (c); Subjects to be Discussed at Pretrial Conferences. This subdivision expands upon the list of things that may be discussed at a pretrial conference that appeared in original Rule 16. The intention is to encourage better plannning and management of litigation. Increased judicial control during the pretrial process accelerates the processing and termination of cases. Flanders, Case Management and Court Management in United States District Courts, Federal Judicial Center (1977). See also Report of the National Commission for the Review of Antitrust Laws and Procedures (1979).

The reference in Rule 16(c)(1) to "formulation" is intended to clarify and confirm the court's power to identify the litigable issues. It has been added in the hope of promoting efficiency and conserving judicial resources by identifying the real issues prior to trial, thereby saving time and expense for everyone. See generally Meadow Gold Prods. Co. v. Wright, 278 F.2d

867 (D.C. Cir. 1960). The notion is emphasized by expressly authorizing the elimination of frivolous claims or defenses at a pretrial conference. There is no reason to require that this await a formal motion for summary judgment. Nor is there any reason for the court to wait for the parties to initiate the process called for in Rule 16(c)(1).

The timing of any attempt at issue formulation is a matter of judicial discretion. In relatively simple cases it may not be necessary or may take the form of a stipulation between counsel or a request by the court that counsel work together to draft a proposed order.

Counsel bear a substantial responsibility for assisting the court in identifying the factual issues worthy of trial. If counsel fail to identify an issue for the court, the right to have the issue tried is waived. Although an order specifying the issues is intended to be binding, it may be amended at trial to avoid manifest injustice. See Rule 16(e). However, the rule's effectiveness depends on the court employing its discretion sparingly.

Clause (6) acknowledges the widespread availability and use of magistrates. The corresponding provision in the original rule referred only to masters and limited the function of the reference to the making of "findings to be used as evidence" in a case to be tried to a jury. The new text is not limited and broadens the potential use of a magistrate to that permitted by the Magistrate's Act.

Clause (7) explicitly recognizes that it has become commonplace to discuss settlement at pretrial conferences. Since it obviously eases crowded court dockets and results in savings to the litigants and the judicial system, settlement should be facilitated at as early a stage of the litigation as possible. Although it is not the purpose of Rule 16(b)(7) to impose settlement negotiations on unwilling litigants, it is believed that providing a neutral forum for discussing the subject might foster it. See Moore's Federal Practice ¶ 16.17; 6 Wright & Miller, Federal Practice and Procedure: Civil § 1522 (1971). For instance, a judge to whom a case has been assigned may arrange, on his own motion or at a party's request, to have settlement conferences handled by another member of the court or by a magistrate. The rule does not make settlement conferences mandatory because they would be a waste of time in many cases. See Flanders, Case Management and Court Management in the United States District Courts, 39, Federal Judicial Center (1977). Requests for a conference from a party indicating a willingness to talk settlement normally should be honored, unless thought to be frivolous or dilatory.

A settlement conference is appropriate at any time. It may be held in conjunction with a pretrial or discovery conference, although various objectives of pretrial management, such as moving the case toward trial, may not always be compatible with settlement negotiations, and thus a separate settlement conference may be desirable. See 6 Wright & Miller, Federal Practice and Procedure: Civil § 1522, at p. 571 (1971).

In addition to settlement, Rule 16(c)(7) refers to exploring the use of procedures other than litigation to resolve the dispute. This includes urging the litigants to employ adjudicatory techniques outside the courthouse. See, for example, the experiment described in Green, Marks & Olson, Settling Large Case Litigation: An Alternative Approach, 11 Loyola of L.A. L.Rev. 493 (1978).

Rule 16(c)(10) authorizes the use of special pretrial procedures to expedite the adjudication of potentially difficult or protracted cases. Some district courts obviously have done so for many years. See Rubin, The Managed Calendar: Some Pragmatic Suggestions About Achieving the Just, Speedy and Inexpensive Determination of Civil Cases in Federal Courts, 4 Just. Sys. J. 135 (1976). Clause 10 provides an explicit authorization for such procedures and encourages their use. No particular techniques have been described; the Committee felt that flexibility and experience are the keys to efficient management of complex cases. Extensive guidance is offered in such documents as the Manual for Complex Litigation.

The rule simply identifies characteristics that make a case a strong candidate for special treatment. The four mentioned are illustrative, not exhaustive, and overlap to some degree. But experience has shown that one or more of them will be present in every protracted or difficult case and it seems desirable to set them out. See Kendig, Procedures for Management of Non-Routine Cases, 3 Hofstra L.Rev. 701 (1975).

The last sentence of subdivision (c) is new. See Wisconsin Civil Procedure Rule 802.11(2). It has been added to meet one of the criticisms of the present practice described earlier and insure proper preconference preparation so that the meeting is more than a ceremonial or ritualistic event. The reference to "authority" is not intended to insist upon the ability to settle the litigation. Nor should the rule be read to encourage the judge conducting the conference to compel attorneys to enter into stipulations or to make admissions that they consider to be unreasonable, that touch on matters that could not normally have been anticipated to arise at the conference, or on subjects of a dimension that normally require prior consultation with and approval from the client.

Subdivision (d); Final Pretrial Conference. This provison has been added to make it clear that the time between any final pretrial conference (which in a simple case may be the only pretrial conference) and trial should be as short as possible to be certain that the litigants make substantial progress with the case and avoid the inefficiency of having that preparation repeated when there is a delay between the last pretrial conference and trial. An optimum time of 10 days to two weeks has been suggested by one federal judge. Rubin, The Managed Calendar: Some Pragmatic Suggestions About Achieving the Just, Speedy and Inexpensive Determination of Civil Cases in Federal Courts, 4 Just. Sys. J. 135, 141 (1978). The Committee, however, concluded that it would be inappropriate

to fix a precise time in the rule, given the numerous variables that could bear on the matter. Thus the timing has been left to the court's discretion.

At least one of the attorneys who will conduct the trial for each party must be present at the final pretrial conference. At this late date there should be no doubt as to which attorney or attorneys this will be. Since the agreements and stipulations made at this final conference will control the trial, the presence of lawyers who will be involved in it is especially useful to assist the judge in structuring the case, and to lead to a more effective trial.

Subdivision (e); Pretrial Orders. Rule 16(e) does not substantially change the portion of the original rule dealing with pretrial orders. The purpose of an order is to guide the course of the litigation and the language of the original rule making that clear has been retained. No compelling reason has been found for major revision, especially since this portion of the rule has been interpreted and clarified by over forty years of judicial decisions with comparatively little difficulty. See 6 Wright & Miller, Federal Practice and Procedure: Civil §§ 1521-30 (1971). Changes in language therefore have been kept to a minimum to avoid confusion.

Since the amended rule encourages more extensive pretrial management than did the original, two or more conferences may be held in many cases. The language of Rule 16(e) recognizes this possibility and the corresponding need to issue more than one pretrial order in a single case.

Once formulated, pretrial orders should not be changed lightly; but total inflexibility is undesirable. See, e.g., Clark v. Pennsylvania R.R. Co., 328 F.2d 591 (2d Cir. 1964). The exact words used to describe the standard for amending the pretrial order probably are less important than the meaning given them in practice. By not imposing any limitation on the ability to modify a pretrial order, the rule reflects the reality that in any process of continuous management what is done at one conference may have to be altered at the next. In the case of the final pretrial order, however, a more stringent standard is called for and the words "to prevent manifest injustice," which appeared in the original rule, have been retained. They have the virtue of familiarity and adequately describe the restraint the trial judge should exercise.

Many local rules make the plaintiff's attorney responsible for drafting a proposed pretrial order, either before or after the conference. Others allow the court to appoint any of the attorneys to perform the task, and others leave it to the court. See Note, Pretrial Conference: A Critical Examination of Local Rules Adopted by Federal District Courts, 64 Va.L.Rev. 467 (1978). Rule 16 has never addressed this matter. Since there is no consensus about which method of drafting the order works best and there is no reason to believe that nationwide uniformity is needed, the rule has been left silent on the point. See Handbook for Effective Pretrial Procedure, 37 F.R.D. 225 (1964).

Subdivision (f); Sanctions. Original Rule 16 did not mention the sanctions that might be imposed for failing to comply with the rule. However, courts have not hesitated to enforce it by appropriate measures. See, e.g., Link v. Wabash R. Co., 370 U.S. 628 (1962) (district court's dismissal under Rule 41(b) after plaintiff's attorney failed to appear at a pretrial conference upheld); Admiral Theatre Corp. v. Douglas Theatre, 585 F.2d 877 (8th Cir. 1978) (district court has discretion to exclude exhibits or refuse to permit the testimony of a witness not listed prior to trial in contravention of its pretrial order).

To reflect that existing practice, and to obviate dependence upon Rule 41(b) or the court's inherent power to regulate litigation, cf. Societe Internationale Pour Participations Industrielles et Commerciales, S.A. v. Rogers, 357 U.S. 197 (1958), Rule 16(f) expressly provides for imposing sanctions on disobedient or recalcitrant parties, their attorneys, or both in four types of situations. Rodes, Ripple & Mooney, Sanctions Imposable for Violations of the Federal Rules of Civil Procedure 65-67, 80-84, Federal Judicial Center (1981). Furthermore, explicit reference to sanctions reenforces the rule's intention to encourage forceful judicial management.

Rule 16(f) incorporates portions of Rule 37(b)(2), which prescribes sanctions for failing to make discovery. This should facilitate application of Rule 16(f), since courts and lawyers already are familiar with the Rule 37 standards. Among the sanctions authorized by the new subdivision are: preclusion order, striking a pleading, staying the proceeding, default judgment, contempt, and charging a party, his attorney, or both with the expenses, including attorney's fees, caused by noncompliance. The contempt sanction, however, is only available for a violation of a court order. The references in Rule 16(f) are not exhaustive.

As is true under Rule 37(b)(2), the imposition of sanctions may be sought by either the court or a party. In addition, the court has discretion to impose whichever sanction it feels is appropriate under the circumstances. Its action is reviewable under the abuse-of-discretion standard. See National Hockey League v. Metropolitan Hockey Club, Inc., 427 U.S. 639 (1976).

Rule 26. General Provisions Governing Discovery

(a) DISCOVERY METHODS. Parties may obtain discovery by one or more of the following methods: depositions upon oral examination or written questions; written interrogatories; production of documents or things or permission to enter upon land

or other property, for inspection and other purposes; physical and mental examinations; and requests for admission. ~~Unless the court orders otherwise under subdivision (c) of this rule, the frequency of use of these methods is not limited.~~

(b) ~~SCOPE OF DISCOVERY~~ DISCOVERY SCOPE AND LIMITS. Unless otherwise limited by order of the court in accordance with these rules, the scope of discovery is as follows:

(1) In General. Parties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action, whether it relates to the claim or defense of the party seeking discovery or to the claim or defense of any other party, including the existence, description, nature, custody, condition and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. It is not ground for objection that the information sought will be inadmissible at the trial if the information sought appears reasonably calculated to lead to the discovery of admissible evidence.

The frequency or extent of use of the discovery methods set forth in subdivision (a) shall be limited by the court if it determines that: (i) the discovery sought is unreasonably cumulative or duplicative, or is obtainable from some other source that is more convenient, less burdensome, or less

expensive; (ii) the party seeking discovery has had ample opportunity by discovery in the action to obtain the information sought; or (iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations on the parties' resources, and the importance of the issues at stake in the litigation. The court may act upon its own initiative after reasonable notice or pursuant to a motion under subdivision (c).

* * *

(g) SIGNING OF DISCOVERY REQUESTS, RESPONSES, AND OBJECTIONS. Every request for discovery or response or objection thereto made by a party represented by an attorney shall be signed by at least one attorney of record in his individual name, whose address shall be stated. A party who is not represented by an attorney shall sign the request, response, or objection and state his address. The signature of the attorney or party constitutes a certification that he has read the request, response, or objection, and that to the best of his knowledge, information, and belief formed after a reasonable inquiry it is: (1) consistent with these rules and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; (2) not interposed for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of litigation; and (3) not unreasonable or unduly burdensome or expensive, given the

needs of the case, the discovery already had in the case, the amount in controversy, and the importance of the issues at stake in the litigation. If a request, response, or objection is not signed, it shall be stricken unless it is signed promptly after the omission is called to the attention of the party making the request, response or objection and a party shall not be obligated to take any action with respect to it until it is signed.

If a certification is made in violation of the rule, the court, upon motion or upon its own initiative, shall impose upon the person who made the certification, the party on whose behalf the request, response, or objection is made, or both, an appropriate sanction, which may include an order to pay the amount of the reasonable expenses incurred because of the violation, including a reasonable attorney's fee.

ADVISORY COMMITTEE NOTE

Excessive discovery and evasion or resistance to reasonable discovery requests pose significant problems. Recent studies have made some attempt to determine the sources and extent of the difficulties. See Brazil, Civil Discovery: Lawyers' Views of its Effectiveness, Principal Problems and Abuses, American Bar Foundation (1980); Connolly, Holleman & Kuhlman, Judicial Controls and the Civil Litigative Process: Discovery, Federal Judicial Center (1978); Ellington, A Study of Sanctions for Discovery Abuse, Department of Justice (1979); Schroeder & Frank, The Proposed Changes in the Discovery Rules, 1978 Ariz. St. L.J. 475.

The purpose of discovery is to provide a mechanism for making relevant information available to the litigants. "Mutual knowledge of all the relevant facts gathered by both parties is essential to proper litigation." Hickman v. Taylor, 329 U.S. 495, 507 (1947). Thus the spirit of the rules is violated when advocates attempt to use discovery tools as tactical weapons rather than to expose the facts and illuminate the issues by overuse of discovery or unnecessary use of defensive weapons or evasive

responses. All of this results in excessively costly and time-consuming activities that are disproportionate to the nature of the case, the amount involved, or the issues or values at stake.

Given our adversary tradition and the current discovery rules, it is not surprising that there are many opportunities, if not incentives, for attorneys to engage in discovery that, although authorized by the broad, permissive terms of the rules, nevertheless results in delay. See Brazil, The Adversary Character of Civil Discovery: A Critique and Proposals for Change, 31 Vand.L.Rev. 1259 (1978). As a result, it has been said that the rules have "not infrequently [been] exploited to the disadvantage of justice." Herbert v. Lando, 441 U.S. 153, 179 (1979) (Powell, J., concurring). These practices impose costs on an already overburdened system and impede the fundamental goal of the "just, speedy, and inexpensive determination of every action." Fed. R. Civ. P. 1.

Subdivision (a); Discovery Methods. The deletion of the last sentence of Rule 26(a)(1), which provided that unless the court ordered otherwise under Rule 26(c) "the frequency of use" of the various discovery methods was not to be limited, is an attempt to address the problem of duplicative, redundant, and excessive discovery and to reduce it. The amendment, in conjunction with the changes in Rule 26(b)(1), is designed to encourage district judges to identify instances of needless discovery and to limit the use of the various discovery devices accordingly. The question may be raised by one of the parties, typically on a motion for a protective order, or by the court on its own initiative. It is entirely appropriate to consider a limitation on the frequency of use of discovery at a discovery conference under Rule 26(f) or at any other pretrial conference authorized by these rules. In considering the discovery needs of a particular case, the court should consider the factors described in Rule 26(b)(1).

Subdivision (b); Discovery Scope and Limits. Rule 26(b)(1) has been amended to add a sentence to deal with the problem of over-discovery. The objective is to guard against redundant or disproportionate discovery by giving the court authority to reduce the amount of discovery that may be directed to matters that are otherwise proper subjects of inquiry. The new sentence is intended to encourage judges to be more aggressive in identifying and discouraging discovery overuse. The grounds mentioned in the amended rule for limiting discovery reflect the existing practice of many courts in issuing protective orders under Rule 26(c). See, e.g., Carlson Cos. v. Sperry & Hutchinson Co., 374 F.Supp. 1080 (D. Minn. 1974); Dolgow v. Anderson, 53 F.R.D. 661 (E.D.N.Y. 1971); Mitchell v. American Tobacco Co., 33 F.R.D. 262 (M.D.Pa. 1963); Welty v. Clute, 1 F.R.D. 446 (W.D.N.Y. 1941). On the whole, however, district judges have been reluctant to limit the use of the discovery devices. See, e.g., Apco Oil Co. v. Certified Transp., Inc., 46 F.R.D. 428 (W.D.Mo. 1969). See generally 8 Wright & Miller, Federal Practice and Procedure: Civil §§ 2036, 2037, 2039, 2040 (1970).

The first element of the standard, Rule 26(b)(1)(i), is designed to minimize redundancy in discovery and encourage attorneys to be sensitive to the comparative costs of different methods of securing information. Subdivision (b)(1)(ii) also seeks to reduce repetitiveness and to oblige lawyers to think through their discovery activities in advance so that full utilization is made of each deposition, document request, or set of interrogatories. The elements of Rule 26(b)(1)(iii) address the problem of discovery that is disproportionate to the individual lawsuit as measured by such matters as its nature and complexity, the importance of the issues at stake in a case seeking damages, the limitations on a financially weak litigant to withstand extensive opposition to a discovery program or to respond to discovery requests, and the significance of the substantive issues, as measured in philosophic, social, or institutional terms. Thus the rule recognizes that many cases in public policy spheres, such as employment practices, free speech, and other matters, may have importance far beyond the monetary amount involved. The court must apply the standards in an even-handed manner that will prevent use of discovery to wage a war of attrition or as a device to coerce a party, whether financially weak or affluent.

The rule contemplates greater judicial involvement in the discovery process and thus acknowledges the reality that it cannot always operate on a self-regulating basis. See Connolly, Holleman & Kuhlman, Judicial Controls and the Civil Litigative Process: Discovery 77, Federal Judicial Center (1978). In an appropriate case the court could restrict the number of depositions, interrogatories, or the scope of a production request. But the court must be careful not to deprive a party of discovery that is reasonably necessary to afford a fair opportunity to develop and prepare the case.

The court may act on motion, or its own initiative. It is entirely appropriate to resort to the amended rule in conjunction with a discovery conference under Rule 26(f) or one of the other pretrial conferences authorized by the rules.

Subdivision (g); Signing of Discovery Requests, Responses, and Objections. Rule 26(g) imposes an affirmative duty to engage in pretrial discovery in a responsible manner that is consistent with the spirit and purposes of Rules 26 through 37. In addition, Rule 26(g) is designed to curb discovery abuse by explicitly encouraging the imposition of sanctions. The subdivision provides a deterrent to both excessive discovery and evasion by imposing a certification requirement that obliges each attorney to stop and think about the legitimacy of a discovery request, a response thereto, or an objection. The term "response" includes answers to interrogatories and to requests to admit as well as responses to production requests.

If primary responsibility for conducting discovery is to continue to rest with the litigants, they must be obliged to act responsibly and avoid

clause. With this in mind, Rule 26(g), which parallels the amendments to Rule 11, requires an attorney or unrepresented party to sign each discovery request, response, or objection. Motions relating to discovery are governed by Rule 11. However, since a discovery request, response, or objection usually deals with more specific subject matter than motions or papers, the elements that must be certified in connection with the former are spelled out more completely. The signature is a certification of the elements set forth in Rule 26(g).

Although the certification duty requires the lawyer to pause and consider the reasonableness of his request, response, or objection, it is not meant to discourage or restrict necessary and legitimate discovery. The rule simply requires that the attorney make a reasonable inquiry into the factual basis of his response, request, or objection.

The duty to make a "reasonable inquiry" is satisfied if the investigation undertaken by the attorney and the conclusions drawn therefrom are reasonable under the circumstances. It is an objective standard similar to the one imposed by Rule 11. See the Advisory Committee Note to Rule 11. See also Kinee v. Abraham Lincoln Fed. Sav. & Loan Ass'n, 365 F.Supp. 975 (E.D. Pa. 1973). In making the inquiry, the attorney may rely on assertions by the client and on communications with other counsel in the case as long as that reliance is appropriate under the circumstances. Ultimately, what is reasonable is a matter for the court to decide on the totality of the circumstances.

Rule 26(g) does not require the signing attorney to certify the truthfulness of the client's factual responses to a discovery request. Rather, the signature certifies that the lawyer has made a reasonable effort to assure that the client has provided all the information and documents available to him that are responsive to the discovery demand. Thus, the lawyer's certification under Rule 26(g) should be distinguished from other signature requirements in the rules, such as those in Rules 30(e) and 33.

Nor does the rule require a party or an attorney to disclose privileged communications or work product in order to show that a discovery request, response, or objection is substantially justified. The provisions of Rule 26(c), including appropriate orders after in camera inspection by the court, remain available to protect a party claiming privilege or work product protection.

The signing requirement means that every discovery request, response, or objection should be grounded on a theory that is reasonable under the precedents or a good faith belief as to what should be the law. This standard is heavily dependent on the circumstances of each case. The certification speaks as of the time it is made. The duty to supplement discovery responses continues to be governed by Rule 26(e).

Concern about discovery abuse has led to widespread recognition that there is a need for more aggressive judicial control and supervision. ACF Industries, Inc. v. EEOC, 439 U.S. 1081 (1979) (certiorari denied) (Powell, J., dissenting). Sanctions to deter discovery abuse would be more effective if they were diligently applied "not merely to penalize those whose conduct may be deemed to warrant such a sanction, but to deter those who might be tempted to such conduct in the absence of such a deterrent." National Hockey League v. Metropolitan Hockey Club, 427 U.S. 639, 643 (1976). See also Note, The Emerging Deterrence Orientation in the Imposition of Discovery Sanctions, 91 Harv. L. Rev. 1033 (1978). Thus the premise of Rule 26(g) is that imposing sanctions on attorneys who fail to meet the rule's standards will significantly reduce abuse by imposing disadvantage therefor.

Because of the asserted reluctance to impose sanctions on attorneys who abuse the discovery rules, see Brazil, Civil Discovery: Lawyers' Views of its Effectiveness, Principal Problems and Abuses, American Bar Foundation (1980); Ellington, A Study of Sanctions for Discovery Abuse, Department of Justice (1979), Rule 26(g) makes explicit the authority judges now have to impose appropriate sanctions and requires them to use it. This authority derives from Rule 37, 28 U.S.C. § 1927, and the court's inherent power. See Roadway Express, Inc. v. Piper, 447 U.S. 752 (1980); Martin v. Bell Helicopter Co., 85 F.R.D. 654, 661-62 (D. Col. 1980); Note, Sanctions Imposed by Courts on Attorneys Who Abuse the Judicial Process, 44 U.Chi.L.Rev. 619 (1977). The new rule mandates that sanctions be imposed on attorneys who fail to meet the standards established in the first portion of Rule 26(g). The nature of the sanction is a matter of judicial discretion to be exercised in light of the particular circumstances. The court may take into account any failure by the party seeking sanctions to invoke protection under Rule 26(c) at an early stage in the litigation.

The sanctioning process must comport with due process requirements. The kind of notice and hearing required will depend on the facts of the case and the severity of the sanction being considered. To prevent the proliferation of the sanction procedure and to avoid multiple hearings, discovery in any sanction proceeding normally should be permitted only when it is clearly required by the interests of justice. In most cases the court will be aware of the circumstances and only a brief hearing should be necessary.

Rule 52. Findings by the Court

(a) EFFECT. In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon, and judgment shall

be entered pursuant to Rule 58; and in granting or refusing interlocutory injunctions the court shall similarly set forth the findings of fact and conclusions of law which constitute the grounds of its action. Requests for findings are not necessary for purposes of review. Findings of fact shall not be set aside unless clearly erroneous, and due regard shall be given to the opportunity of the trial court to judge of the credibility of the witnesses. The findings of a master, to the extent that the court adopts them, shall be considered as the findings of the court. ~~If an opinion or memorandum of decision is filed, it~~ It will be sufficient if the findings of fact and conclusions of law are stated orally and recorded in open court following the close of the evidence or appear ~~therein~~ in an opinion or memorandum of decision filed by the court. Findings of fact and conclusions of law are unnecessary on decisions of motions under Rules 12 or 56 or any other motion except as provided in Rule 41(b).

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ADVISORY COMMITTEE NOTE

Rule 52(a) has been amended to revise its penultimate sentence to provide explicitly that the district judge may make the findings of fact and conclusions of law required in nonjury cases orally. Nothing in the prior text of the rule forbids this practice, which is widely utilized by district judges. See Christensen, A Modest Proposal for Immeasurable Improvement, 64 A.B.A.J. 693 (1978). The objective is to lighten the burden on the trial court in preparing findings in nonjury cases. In addition, the amendment should reduce the number of published district court opinions that embrace written findings.

Rule 53. Masters

(a) APPOINTMENT AND COMPENSATION. Each ~~district court with the concurrence of a majority of all the judges thereof may appoint one or more standing masters for its district, and~~ The court in which any action is pending may appoint a special master therein. As used in these rules the word "master" includes a referee, an auditor, an examiner, a ~~commissioner,~~ and an assessor. The compensation to be allowed to a master shall be fixed by the court, and shall be charged upon such of the parties or paid out of any fund or subject matter of the action, which is in the custody and control of the court as the court may direct; provided that this provision for compensation shall not apply when a United States magistrate is designated to serve as a master pursuant to Title 28, U.S.C. § 636(b)(2). The master shall not retain his report as security for his compensation; but when the party ordered to pay the compensation allowed by the court does not pay it after notice and within the time prescribed by the court, the master is entitled to a writ of execution against the delinquent party.

(b) REFERENCE. A reference to a master shall be the exception and not the rule. In actions to be tried by a jury, a reference shall be made only when the issues are complicated; in actions to be tried without a jury, save in matters of account and of difficult computation of damages, a reference shall be made only upon a showing that some exceptional condition requires it. Upon

the consent of the parties, a magistrate may be designated to serve as a special master without regard to the provisions of this subdivision.

(c) POWERS. The order of reference to the master may specify or limit his powers and may direct him to report only upon particular issues or to do or perform particular acts or to receive and report evidence only and may fix the time and place for beginning and closing the hearings and for the filing of the master's report. Subject to the specifications and limitations stated in the order, the master has and shall exercise the power to regulate all proceedings in every hearing before him and to do all acts and take all measures necessary or proper for the efficient performance of his duties under the order. He may require the production before him of evidence upon all matters embraced in the reference, including the production of all books, papers, vouchers, documents, and writings applicable thereto. He may rule upon the admissibility of evidence unless otherwise directed by the order of reference and has the authority to put witnesses on oath and may himself examine them and may call the parties to the action and examine them upon oath. When a party so requests, the master shall make a record of the evidence offered and excluded in the same manner and subject to the same limitations as provided in Rule ~~43(c)~~ the Federal Rules of Evidence for a court sitting without a jury.

* * *

(f) A magistrate is subject to this rule only when the order referring a matter to the magistrate expressly provides that the reference is made under this Rule.

ADVISORY COMMITTEE NOTE

Subdivision (a). The creation of full-time magistrates, who serve at government expense and have no nonjudicial duties competing for their time, eliminates the need to appoint standing masters. Thus the prior provision in Rule 53(a) authorizing the appointment of standing masters is deleted. Additionally, the definition of "master" in subdivision (a) now eliminates the superseded office of commissioner.

The term "special master" is retained in Rule 53 in order to maintain conformity with 28 U.S.C. § 636(b)(2), authorizing a judge to designate a magistrate "to serve as a special master pursuant to the applicable provisions of this title and the Federal Rules of Civil Procedure for the United States District Courts." Obviously, when a magistrate serves as a special master, the provisions for compensation of masters are inapplicable, and the amendment to subdivision (a) so provides.

Although the existence of magistrates may make the appointment of outside masters unnecessary in many instances, see, e.g., Gautreaux v. Chicago Housing Authority, 384 F. Supp. 37 (N.D. Ill. 1974), mandamus denied sub nom., Chicago Housing Authority v. Austin, 511 F.2d 82 (7th Cir. 1975); Aveo Corp. v. American Tel. & Tel. Co., 68 F.R.D. 532 (S.D. Ohio 1975), such masters may prove useful when some special expertise is desired or when a magistrate is unavailable for lengthy and detailed supervision of a case.

Subdivision (b). The provisions of 28 U.S.C. § 636(b)(2) not only permit magistrates to serve as masters under Rule 53(b) but also eliminate the exceptional condition requirement of Rule 53(b) when the reference is made with the consent of the parties. The amendment to subdivision (b) brings Rule 53 into harmony with the statute by exempting magistrates, appointed with the consent of the parties, from the general requirement that some exceptional condition requires the reference. It should be noted that subdivision (b) does not address the question, raised in recent decisional law and commentary, as to whether the exceptional condition requirement is applicable when private masters who are not magistrates are appointed with the consent of the parties. See Silberman, Masters and Magistrates Part II: The American Analogue, 50 N.Y.U. L.Rev. 1297, 1354 (1975).

Subdivision (c). The amendment recognizes the abrogation of Federal Rule 43(c) by the Federal Rules of Evidence.

Subdivision (f). The new subdivision responds to confusion flowing from the dual authority for references of pretrial matters to magistrates. Such references can be made, with or without the consent of the parties, pursuant to Rule 53 or under 28 U.S.C. § 636(b)(1)(A) and (b)(1)(B). There are a number of distinctions between references made under the statute and under the rule. For example, under the statute nondispositive pretrial matters may be referred to a magistrate, without consent, for final determination with reconsideration by the district judge if the magistrate's order is clearly erroneous or contrary to law. Under the rule, however, the appointment of a master, without consent of the parties, to supervise discovery would require some exceptional condition (Rule 53(b)) and would subject the proceedings to the report procedures of Rule 53(e). If an order of reference does not clearly articulate the source of the court's authority the resulting proceedings could be subject to attack on grounds of the magistrate's noncompliance with the provisions of Rule 53. This subdivision therefore establishes a presumption that the limitations of Rule 53 are not applicable unless the reference is specifically made subject to Rule 53.

A magistrate serving as a special master under 28 U.S.C. § 636(b)(2) is governed by the provisions of Rule 53, with the exceptional condition requirement lifted in the case of a consensual reference.

Rule 67. Deposit in Court

In an action in which any part of the relief sought is a judgment for a sum of money or the disposition of a sum of money or the disposition of any other thing capable of delivery, a party, upon notice to every other party, and by leave of court, may deposit with the court all or any part of such sum or thing, whether or not that party claims all or any part of the sum or thing. The party making the deposit shall serve the order permitting deposit on the clerk of the court. Money paid into court under this rule shall be deposited and withdrawn in accordance with the provisions of Title 28, U.S.C., §§ 2041, and 2042; the Act of June 26, 1934, c. 756, § 23, as

amended (48 Stat. 1236, 58 Stat. 845), U.S.C., Title 31, § 725v; or any like statute. The fund shall be deposited in an interest-bearing account or invested in an interest-bearing instrument approved by the court.

ADVISORY COMMITTEE NOTE

Rule 67 has been amended in three ways. The first change is the addition of the clause in the first sentence. Some courts have construed the present rule to permit deposit only when the party making it claims no interest in the fund or thing deposited. E.g., Blasin-Stern v. Beech-Nut Life Savers Corp., 429 F.Supp. 533 (D. Puerto Rico 1975); Dinkins v. General Aniline & Film Corp., 214 F.Supp. 281 (S.D.N.Y. 1963). However, there are situations in which a litigant may wish to be relieved of responsibility for a sum or thing, but continue to claim an interest in all or part of it. In these cases the deposit-in-court procedure should be available; in addition to the advantages to the party making the deposit, the procedure gives other litigants assurance that any judgment will be collectable. The amendment is intended to accomplish that.

The second change is the addition of a requirement that the order of deposit be served on the clerk of the court in which the sum or thing is to be deposited. This is simply to assure that the clerk knows what is being deposited and what his responsibilities are with respect to the deposit. The latter point is particularly important since the rule as amended contemplates that deposits will be placed in interest-bearing accounts; the clerk must know what treatment has been ordered for the particular deposit.

The third change is to require that any money be deposited in an interest-bearing account or instrument approved by the court.

Rule 72. Magistrates; Pretrial Matters

(a) NONDISPOSITIVE MATTERS. A magistrate to whom a pretrial matter not dispositive of a claim or defense of a party is referred to hear and determine shall promptly conduct such proceedings as are required and when appropriate enter into the record a written order setting forth the disposition of the matter

The district judge to whom the case is assigned shall consider objections made by the parties, provided they are served and filed within 10 days after the entry of the order, and shall modify or set aside any portion of the magistrate's order found to be clearly erroneous or contrary to law.

(b) DISPOSITIVE MOTIONS AND PRISONER PETITIONS. A magistrate assigned without consent of the parties to hear a pretrial matter dispositive of a claim or defense of a party or a prisoner petition challenging the conditions of confinement shall promptly conduct such proceedings as are required. A record shall be made of all evidentiary proceedings before the magistrate, and a record may be made of such other proceedings as the magistrate deems necessary. The magistrate shall enter into the record a recommendtion for disposition of the matter, including proposed findings of fact when appropriate. The clerk shall forthwith mail copies to all parties.

A party objecting to the recommended disposition of the matter shall promptly arrange for the transcription of the record, or portions of it as all parties may agree upon or the magistrate deems sufficient, unless the district judge otherwise directs. Within 10 days after being served with a copy of the recommended disposition, a party may serve and file specific, written objections to the proposed findings and recommendations. A party may respond to another party's objections within 10 days after being served with a

copy thereof. The district judge to whom the case is assigned shall make a de novo determination upon the record, or after additional evidence, of any portion of the magistrate's disposition to which specific written objection has been made in accordance with this rule. The district judge may accept, reject, or modify the recommended decision, receive further evidence, or recommit the matter to the magistrate with instructions.

ADVISORY COMMITTEE NOTE

Subdivision (a). This subdivision addresses court-ordered referrals of nondispositive matters under 28 U.S.C. § 636(b)(1)(A). The rule calls for a written order of the magistrate's disposition to preserve the record and facilitate review. An oral order read into the record by the magistrate will satisfy this requirement.

No specific procedures or timetables for raising objections to the magistrate's rulings on nondispositive matters are set forth in the Magistrates Act. The rule fixes a 10-day period in order to avoid uncertainty and provide uniformity that will eliminate the confusion that might arise if different periods were prescribed by local rule in different districts. It also is contemplated that a party who is successful before the magistrate will be afforded an opportunity to respond to objections raised to the magistrate's ruling.

The last sentence of subdivision (a) specifies that reconsideration of a magistrate's order, as provided for in the Magistrates Act, shall be by the district judge to whom the case is assigned. This rule does not restrict experimentation by the district courts under 28 U.S.C. § 636(b)(3) involving references of matters other than pretrial matters, such as appointment of counsel, taking of default judgments, and acceptance of jury verdicts when the judge is unavailable.

Subdivision (b). This subdivision governs court-ordered referrals of dispositive pretrial matters and prisoner petitions challenging conditions of confinement, pursuant to statutory authorization in 28 U.S.C. § 636(b)(1)(B). This rule does not extend to habeas corpus petitions, which are covered by the specific rules relating to proceedings under Sections 2254 and 2255 of Title 28.

This rule implements the statutory procedures for making objections to the magistrate's proposed findings and recommendations. The 10-day period, as specified in the statute, is subject to Rule 6(e) which provides for an additional 3-day period when service is made by mail. Although no specific provision appears in the Magistrates Act, the rule specifies a 10-day period for a party to respond to objections to the magistrate's recommendation.

Implementing the statutory requirments, the rule requires the district judge to whom the case is assigned to make a de novo determination of those portions of the report, findings, or recommendations to which timely objection is made. The term "de novo" signifies that the magistrate's findings are not protected by the clearly erroneous doctrine, but does not indicate that a second evidentiary hearing is required. See United States v. Raddatz, 417 U.S. 667 (1980). See also Silberman, Masters and Magistrates Part II: The American Analogue, 50 N.Y.U. L.Rev. 1297, 1367 (1975). When no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation. See Campbell v. United States Dist. Court, 501 F.2d 196, 206 (9th Cir. 1974), cert. denied, 419 U.S. 879, quoted in House Report No. 94-1609, 94th Cong. 2d Sess. (1976) at 3. Compare Park Motor Mart, Inc. v. Ford Motor Co., 616 F.2d 603 (1st Cir. 1980). Failure to make timely objection to the magistrate's report prior to its adoption by the district judge may constitute a waiver of appellate review of the district judge's order. See United States v. Walters, 638 F.2d 947 (6th Cir. 1981).

Rule 73. Magistrates; Trial by Consent and Appeal Options

(a) POWERS; PROCEDURE. When specially designated to exercise such jurisdiction by local rule or order of the district court and when all parties consent thereto, a magistrate may exercise the authority provided by Title 28, U.S.C. § 636(c) and may conduct any or all proceedings, including a jury or nonjury trial, in a civil case. A record of the proceedings shall be made in accordance with the requirements of Title 28, U.S.C. § 636(c)(7).

(b) CONSENT. When a magistrate has been designated to exercise civil trial jurisdiction, the clerk shall give written notice to the parties of their opportunity to consent to the exercise by a

magistrate of civil jurisdiction over the case, as authorized by Title 28, U.S.C. § 636(c). If, within the period specified by local rule, the parties agree to a magistrate's exercise of such authority, they shall execute and file a joint form of consent or separate forms of consent setting forth such election.

No district judge, magistrate, or other court official shall attempt to persuade or induce a party to consent to a reference of a civil matter to a magistrate under this rule, nor shall a district judge or magistrate be informed of a party's response to the clerk's notification, unless all parties have consented to the referral of the matter to a magistrate.

The district judge, for good cause shown on his own motion or under extraordinary circumstances shown by a party, may vacate a reference of a civil matter to a magistrate under this subdivision.

(c) NORMAL APPEAL ROUTE. In accordance with Title 28, U.S.C. § 636(c)(3), unless the parties otherwise agree to the optional appeal route provided for in subdivision (d) of this rule, appeal from a judgment entered upon direction of a magistrate in proceedings under this rule will lie to the court of appeals as it would from a judgment of the district court.

(d) OPTIONAL APPEAL ROUTE. In accordance with Title 28, U.S.C. § 636(c)(4), at the time of reference to a magistrate, the parties may consent to appeal on the record to a judge of the district court and thereafter, by petition only, to the court of appeals.

ADVISORY COMMITTEE NOTE

Subdivision (a). This subdivision implements the broad authority of the 1979 amendments to the Magistrates Act, 28 U.S.C. § 636(c), which permit a magistrate to sit in lieu of a district judge and exercise civil jurisdiction over a case, when the parties consent. See McCabe, The Federal Magistrate Act of 1979, 16 Harv. J. Legis. 343, 364-79 (1979). In order to exercise this jurisdiction, a magistrate must be specially designated under 28 U.S.C. § 636(c)(1) by the district court or courts he serves. The only exception to a magistrate's exercise of civil jurisdiction, which includes the power to conduct jury and nonjury trials and decide dispositive motions, is the contempt power. A hearing on contempt is to be conducted by the district judge upon certification of the facts and an order to show cause by the magistrate. See 28 U.S.C. § 639(e). In view of 28 U.S.C. § 636(c)(1) and this rule, it is unnecessary to amend Rule 58 to provide that the decision of a magistrate is a "decision by the court" for the purposes of that rule and a "final decision of the district court" for purposes of 28 U.S.C. § 1291 governing appeals.

Subdivision (b). This subdivision implements the blind consent provision of 28 U.S.C. § 636(c)(2) and is designed to ensure that neither the judge nor the magistrate attempts to induce a party to consent to reference of a civil matter under this rule to a magistrate. See House Rep. No. 96-444, 96th Cong. 1st Sess. 8 (1979).

The rule opts for a uniform approach in implementing the consent provision by directing the clerk to notify the parties of their opportunity to elect to proceed before a magistrate and by requiring the execution and filing of a consent form or forms setting forth the election. However, flexibility at the local level is preserved in that local rules will determine how notice shall be communicated to the parties, and local rules will specify the time period within which an election must be made.

The last paragraph of subdivision (b) reiterates the provision in 28 U.S.C. § 636(c)(6) for vacating a reference to the magistrate.

Subdivision (c). Under 28 U.S.C. § 636(c)(3), the normal route of appeal from the judgment of a magistrate—the only route that will be available unless the parties otherwise agree in advance—is an appeal by the aggrieved party "directly to the appropriate United States court of appeals from the judgment of the magistrate in the same manner as an appeal from any other judgment of a district court." The quoted statutory language indicates Congress' intent that the same procedures and standards of appealability that govern appeals from district court judgments govern appeals from magistrates' judgments.

Subdivision (d). 28 U.S.C. § 636(c)(4) offers parties who consent to the exercise of civil jurisdiction by a magistrate an alternative appeal route to that provided in subdivision (c) of this rule. This optional appellate route was provided by Congress in recognition of the fact that not all civil cases warrant the same appellate treatment. In cases where the amount in controversy is not great and there are no difficult questions of law to be resolved, the parties may desire to avoid the expense and delay of appeal to the court of appeals by electing an appeal to the district judge. See McCabe, The Federal Magistrate Act of 1979, 16 Harv. J. Legis. 343, 388 (1979). This subdivision provides that the parties may elect the optional appeal route at the time of reference to a magistrate. To this end, the notice by the clerk under subdivision (b) of this rule shall explain the appeal option and the corollary restriction on review by the court of appeals. This approach will avoid later claims of lack of consent to the avenue of appeal. The choice of the alternative appeal route to the judge of the district court should be made by the parties in their forms of consent. Special appellate rules to govern appeals from a magistrate to a district judge appear in new Rules 74 through 76.

Rule 74. Method of Appeal from Magistrate to District Judge under Title 28, U.S.C. § 636(c)(4) and Rule 73(d)

(a) WHEN TAKEN. When the parties have elected under Rule 73(d) to proceed by appeal to a district judge from an appealable decision made by a magistrate under the consent provisions of Title 28, U.S.C. § 636(c)(4), an appeal may be taken from the decision of a magistrate by filing with the clerk of the district court a notice of appeal within 30 days of the date of entry of the judgment appealed from; but if the United States or an officer or agency thereof is a party, the notice of appeal may be filed by any party within 60 days of such entry. If a timely notice of appeal is filed by a party, any other party may file a notice of appeal within 14 days thereafter, or within the time otherwise prescribed by this subdivision, whichever period last expires.

The running of the time for filing a notice of appeal is terminated as to all parties by the timely filing of any of the following motions with the magistrate by any party, and the full time for appeal from the judgment entered by the magistrate commences to run anew from entry of any of the following orders: (1) granting or denying a motion for judgment under Rule 50(b); (2) granting or denying a motion under Rule 52(b) to amend or make additional findings of fact, whether or not an alteration of the judgment would be required if the motion is granted; (3) granting or denying a motion under Rule 59 to alter or amend the judgment; (4) denying a motion for a new trial under Rule 59.

An interlocutory decision or order by a magistrate which, if made by a judge of the district court, could be appealed under any provision of law, may be appealed to a judge of the district court by filing a notice of appeal within 15 days after entry of the decision or order, provided the parties have elected to appeal to a judge of the district court under Rule 73(d). An appeal of such interlocutory decision or order shall not stay the proceedings before the magistrate unless the magistrate or judge shall so order.

Upon a showing of excusable neglect, the magistrate may extend the time for filing a notice of appeal upon motion filed not later than 20 days after the expiration of the time otherwise prescribed by this rule.

(b) NOTICE OF APPEAL; SERVICE. The notice of appeal shall specify the party or parties taking the appeal, designate the judgment, order or part thereof appealed from, and state that the appeal is to a judge of the district court. The clerk shall mail copies of the notice to all other parties and note the date of mailing in the civil docket.

(c) STAY PENDING APPEAL. Upon a showing that the magistrate has refused or otherwise failed to stay the judgment pending appeal to the district judge under Rule 73(d), the appellant may make application for a stay to the district judge with reasonable notice to all parties. The stay may be conditioned upon the filing in the district court of a bond or other appropriate security.

(d) DISMISSAL. For failure to comply with these rules or any local rule or order, the district judge may take such action as is deemed appropriate, including dismissal of the appeal. The district judge also may dismiss the appeal upon the filing of a stipulation signed by all parties, or upon motion and notice by the appellant.

ADVISORY COMMITTEE NOTE

Subdivision (a). This rule governs appeals from decisions of magistrates exercising consensual civil jurisdiction under Rule 73 when the parties elect to appeal to a judge of the district court under subdivision (d) of that rule. Congress specified that such an appeal would be "on the record to a judge of the district court in the same manner as on an appeal from a judgment of the district court to a court of appeals." See 28 U.S.C. § 636(c)(4). Presumably, Congress intended that the district court follow the same general procedures, including the "clearly erroneous" factual review standard of Civil Rule 52(a), that a court of appeals follows in

reviewing a judgment of the district court. However, Congress also provided that "whenever possible" the local rules of the district court shall endeavor to make appeals expeditious and inexpensive. See 28 U.S.C. § 636(c)(4). Since the Federal Rules of Appellate Procedure are designed to cover appeals from a single judge to a three-member appeal tribunal, some modifications have proved desirable in assuring an expeditious appeal from a magistrate to a single district judge. Rules 74 through 76 provide this set of rules governing appeals from magistrates' exercise of consensual jurisdiction.

The time limits in subdivision (a) generally conform to those in Appellate Rule 4(a), except that the period in which a party may move for leave to file a late notice of appeal on grounds of excusable neglect is 20 days, rather than the 30-day period provided for in the Appellate Rules.

The term "appealable decision" as used in this rule embraces the "final decision" concept of 28 U.S.C. § 1291 and permits an appeal from a magistrate to a district judge in those situations in which an appeal from a district judge to the court of appeals would lie. That term, along with the specific provision in the rule permitting appeals of certain interlocutory orders, incorporates by reference the provisions of 28 U.S.C. § 1292 and adopts, by analogy to Section 1292(b), a certification procedure for otherwise unappealable orders "where the order is based on a controlling question of law as to which there is substantial ground for difference of opinion and an immediate appeal from the order may materially advance the ultimate termination of the litigation." Although no specific certification procedure is set forth, the rule contemplates that a magistrate may certify such an order for appeal, and the district judge, in his discretion, may allow the appeal. In the interest of expediting the trial, interlocutory appeals of any kind will not stay the proceedings unless the magistrate or district judge finds that the nature of the appeal or its relation to the remaining proceedings requires a stay.

Subdivision (b). The provisions governing the content and service of the notice of appeal conform substantially to Rules 3(c) and 3(d) of the Federal Rules of Appellate Procedure.

Subdivision (c). This subdivision represents a simplified version of Rule 8 of the Federal Rules of Appellate Procedure. Under this subdivision, the district judge is in the position of an appellate judge under Rule 8 of the Appellate Rules when the judge below has refused a stay under Rule 62.

In proceedings under 28 U.S.C. § 636(c), an application for a stay of the judgment under Rule 62 initially will be made to the magistrate. The district judge under this rule may hear an application for a stay of the judgment upon a showing that the magistrate has refused to stay the judgment pending appeal to the district judge.

Subdivision (d). The provisions governing dismissal are similar to Rule 3(a) (failure to prosecute) and Rule 42(a) (voluntary dismissal) of the Federal Rules of Appellate Procedure.

Rule 75. Proceedings on Appeal from Magistrate to District Judge under Rule 73(d)

(a) APPLICABILITY. In proceedings under Title 28, U.S.C. § 636(c), when the parties have previously elected under Rule 73(d) to appeal to a district judge rather than to the court of appeals, this rule shall govern the proceedings on appeal.

(b) RECORD ON APPEAL.

(1) Composition. The original papers and exhibits filed with the clerk of the district court, the transcript of the proceedings, if any, and the docket entries shall constitute the record on appeal. In lieu of this record the parties, within 10 days after the filing of the notice of appeal, may file a joint statement of the case showing how the issues presented by the appeal arose and were decided by the magistrate, and setting forth only so many of the facts averred and proved or sought to be proved as are essential to a decision of the issues presented.

(2) Transcript. Within 10 days after filing the notice of appeal the appellant shall make arrangements for the production of a transcript of such parts of the proceedings as he deems necessary. Unless the entire transcript is to be included, the appellant, within the time provided above, shall serve on the appellee and file with the court a description of the parts of the

transcript which he intends to present on the appeal. If the appellee deems a transcript of other parts of the proceedings to be necessary, within 10 days after the service of the statement of the appellant, he shall serve on the appellant and file with the court a designation of additional parts to be included. The appellant shall promptly make arrangements for the inclusion of all such parts unless the magistrate, upon motion, exempts the appellant from providing certain parts, in which case the appellee may provide for their transcription.

(3) Statement in Lieu of Transcript. If no record of the proceedings is available for transcription, the parties shall, within 10 days after the filing of the notice of appeal, file a statement of the evidence from the best available means to be submitted in lieu of the transcript. If the parties cannot agree they shall submit a statement of their differences to the magistrate for settlement.

(c) TIME FOR FILING BRIEFS. Unless a local rule or court order otherwise provides, the following time limits for filing briefs shall apply.

(1) The appellant shall serve and file his brief within 20 days after the filing of the transcript, statement of the case, or statement of the evidence.

(2) The appellee shall serve and file his brief within 20 days after service of the brief of the appellant.

(3) The appellant may serve and file a reply brief within 10 days after service of the brief of the appellee.

(4) If the appellee has filed a cross-appeal, he may file a reply brief limited to the issues on the cross-appeal within 10 days after service of the reply brief of the appellant.

(d) LENGTH AND FORM OF BRIEFS. Briefs may be typewritten. The length and form of briefs shall be governed by local rule.

(e) ORAL ARGUMENT. The opportunity for the parties to be heard on oral argument shall be governed by local rule.

ADVISORY COMMITTEE NOTE

Subdivision (a). 28 U.S.C. § 636(c)(4) provides that whenever possible the local rules of the district court shall endeavor to make appeals from the magistrate to the district judge expeditious and inexpensive. The provisions of this rule are directed to that end in simplifying the record on appeal and permitting typewritten briefs. The availability of oral argument and the length and form of briefs are matters appropriately left to local rule.

Subdivision (b). The provisions governing the composition of the record and the transcript are adapted from Rule 10 of the Federal Rules of Appellate Procedure. The language requiring the appellant to "make arrangements for the production of a transcript" is broad enough to require the party to order a transcript from the court reporter or to make arrangements to transcribe a taped record of the proceedings. The magistrate is to settle any differences regarding the extent of the transcript and to require the appellant to provide for transcription of any additional portions designated by the appellee that are material to the issues on appeal. Naturally, the rule is subject to the operation of 28 U.S.C. § 1915 in the case of a party who is unable to pay such costs.

Although it is not anticipated that an appeal will often be taken from a hearing or trial of which no record was made, the parties do have the option to forego a record in routine matters under 28 U.S.C. § 636(c)(7). In such cases a statement of the evidence will be prepared by the parties (or by the magistrate if the parties cannot agree) from the best available

means, including the recollections and notes of the parties and the magistrate.

Subdivision (c). Although the parties, with agreement of the court, can dispense with the filing of briefs, a schedule for the serving and filing of briefs will often be necessary. In lieu of the elaborate provisions of Rules 28 through 32 of the Federal Rules of Appellate Procedure, this rule adopts a simplified approach for the filing and serving of briefs in order to achieve an inexpensive and expeditious appeal from a magistrate's judgment to a district judge. The timing of the appellant's initial brief is tied to the filing of the transcript or statement, instead of the filing of the record (Appellate Rule 31(a)) or the docketing of the appeal, because the rest of the record is already in the hands of the district court clerk and need not be transmitted. This rule does not require payment of a filing fee. Thus the filing of the transcript or statement is all that remains of the traditional concepts of filing the record and docketing the appeal.

The introductory clause of the rule recognizes the desirability of allowing local and individual variations in the filing of briefs, and the numbered clauses prescribe shorter periods than the corresponding intervals allowed by Appellate Rule 31(a). The provision allowing a reply brief for an appellee who has filed a cross-appeal is taken from Appellate Rule 28(c).

Subdivision (d). The use of typewritten briefs is urged as a means of minimizing costs and of expediting appeals from the magistrate to the district judge. The form and length of briefs should be addressed as a matter of local rule in order to avoid resort to the more elaborate provisions of the Federal Rules of Appellate Procedure.

Subdivision (e). The availability of oral argument has been left as a matter for local rule.

Rule 76. Judgment of the District Judge on the Appeal under Rule 73(d) and Costs

(a) ENTRY OF JUDGMENT. When the parties have elected under Rule 73(d) to appeal from a judgment of the magistrate to a district judge, the clerk shall prepare, sign, and enter judgment in accordance with the order or decision of the district judge following an appeal from a judgment of the magistrate, unless the district judge directs otherwise. The clerk shall mail to all parties a copy of the order or decision of the district judge.

(b) STAY OF JUDGMENTS. The decision of the district judge shall be stayed for 10 days during which time a party may petition the district judge for rehearing, and a timely petition shall stay the decision of the district judge pending disposition of a petition for rehearing. Upon the motion of a party, the decision of the district judge may be stayed in order to allow a party to petition the court of appeals for leave to appeal.

(c) COSTS. Except as otherwise provided by law or ordered by the district judge, costs shall be taxed against the losing party; if a judgment of the magistrate is affirmed in part or reversed in part, or is vacated, costs shall be allowed only as ordered by the district judge. The cost of the transcript, if necessary for the determination of the appeal, and the premiums paid for bonds to preserve rights pending appeal shall be taxed as costs by the clerk.

ADVISORY COMMITTEE NOTE

Subdivision (a). This subdivision, adapted from Rule 36 of the Federal Rules of Appellate Procedure, directs the clerk to enter judgment in accordance with the order or decision of the district judge affirming, reversing, or modifying the judgment of the magistrate and to mail copies of the order or decision to all parties.

Subdivision (b). This subdivision, adapted from Rule 41 of the Federal Rules of Appellate Procedure, stays the effect of the district judge's decision on an appeal from a judgment of the magistrate. The availability of a rehearing by the district judge is contemplated (see Appellate Rule 40), but no particular form of petition is specified by the rule. The initial 10-day stay and the stay pending disposition of a timely petition for rehearing operate automatically upon the magistrate and all parties. Any other stay is at the discretion of the district judge.

Subdivision (c). This provision for costs on appeal is adapted from tule 39 of the Federal Rules of Appellate Procedure to achieve the nexpensive appellate process envisioned for district judge review of nagistrate action. No filing fee is required since a single clerk's office andles the file throughout, and no bond for costs is required. Ordinarily he only costs will be the costs of the transcript and the premium for any upersedeas bond.

APPENDIX OF FORMS

* * *

Form 33.

NOTICE OF RIGHT TO CONSENT TO THE EXERCISE OF CIVIL JURISDICTION BY A MAGISTRATE AND APPEAL OPTION

In accordance with the provisions of Title 28, U.S.C. § 636(c), you are hereby notified that the United States magistrates of this district court, in addition to their other duties, upon the consent of all parties in a civil case, may conduct any or all proceedings in a civil case including a jury or nonjury trial, and order the entry of a final judgment.

You should be aware that your decision to consent, or not to consent, to the referral of your case to a United States magistrate must be entirely voluntary. Only if all the parties to the case consent to the reference to a magistrate will either the judge or magistrate to whom the case has been assigned be informed of your decision.

An appeal from a judgment entered by a magistrate may be taken directly to the United States court of appeals for this judicial circuit in the same manner as an appeal from any other judgment of a district court. Alternatively, upon consent of all parties, an appeal from a judgment entered by a magistrate may be taken directly to a district judge. Cases in which an appeal is taken to a district judge may be reviewed by the United States court of appeals for this judicial circuit only by way of petition for leave to appeal.

Copies of the Form for the "Consent to Proceed Before a United States Magistrate" and "Election of Appeal to a District Judge" are available from the clerk of the court.

Form 34.

CONSENT TO PROCEED BEFORE
A UNITED STATES MAGISTRATE,
ELECTION OF APPEAL TO DISTRICT JUDGE,
AND ORDER OF REFERENCE

UNITED STATES DISTRICT COURT FOR THE _____

DISTRICT OF _____

----------X

Plaintiff,

vs. Docket No. _____

Defendant.

----------X

CONSENT TO PROCEED BEFORE A UNITED STATES MAGISTRATE

In accordance with the provisions of Title 28, U.S.C. § 636(c), the parties to the above-captioned civil matter hereby voluntarily waive their rights to proceed before a judge of the United States district court and consent to have a United States magistrate conduct any and all further proceedings in the case, including trial, and order the entry of a final judgment.

_____

_____

_____
Date

ELECTION OF APPEAL TO DISTRICT JUDGE

[Do not execute this portion of the Consent Form if the parties desire that the appeal lie directly to the court of appeals.]

In accordance with the provisions of Title 28, U.S.C. § 636(c)(4), the parties elect to take any appeal in this case to a district judge.

_____

_____

_____
Date

ORDER OF REFERENCE

IT IS HEREBY ORDERED that the above-captioned matter be referred to United States Magistrate _____ for all further proceedings and the entry of judgment in accordance with Title 28, U.S.C. § 636(c) and the foregoing consent of the parties.

_____
U.S. District Judge

Note: Return this form to the Clerk of the Court only if all parties have consented to proceed before a magistrate.

○

98th Congress, 1st Session - - - - - - - - House Document No. 98–55

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE FOR THE U.S. DISTRICT COURTS

COMMUNICATION

FROM

THE CHIEF JUSTICE OF THE UNITED STATES

TRANSMITTING

AMENDMENTS TO THE RULES OF CRIMINAL PROCEDURE FOR THE U.S. DISTRICT COURTS, ADOPTED BY THE SUPREME COURT PURSUANT TO 18 U.S.C. 3771 AND 3772, TOGETHER WITH THE REPORT OF THE JUDICIAL CONFERENCE OF THE UNITED STATES SUBMITTED TO THE COURT PURSUANT TO 28 U.S.C. 331

APRIL 28, 1983.—Referred to the Committee on the Judiciary and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
11-011 O WASHINGTON : 1983

SUPREME COURT OF THE UNITED STATES,
Washington, D.C., April 28, 1983.

Hon. THOMAS P. O'NEILL, Jr.,
Speaker of the House of Representatives,
Washington, D.C.

DEAR MR. SPEAKER: By direction of the Supreme Court of the United States, I have the honor to submit to the Congress amendments to the Federal Rules of Criminal Procedure which have been adopted by the Supreme Court pursuant to title 18, United States Code, sections 3771 and 3772. Justice O'Connor dissents from the adoption of these rules.

Accompanying these rules is an excerpt from the report of the Judicial Conference of the United States containing the advisory committee notes submitted to the Court for its consideration pursuant to title 28, United States Code, section 331.

Respectfully,

WARREN E. BURGER.

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SUPREME COURT OF THE UNITED STATES

April 28, 1983

ORDERED:

1. That the Federal Rules of Criminal Procedure for the United States District Courts be, and they hereby are, amended by including therein new Rules 11(h), 12(i) and 12.2(e), and amendments to Rules 6(e) and (g), 11(a), 12.2(b), (c) and (d), 16(a), 23(b), 32(a), (c) and (d), 35(b) and 55, as hereinafter set forth:

[See infra., pp. ____ ____ ____.]

2. That Rule 58 of the Federal Rules of Criminal Procedure and the Appendix of Forms are hereby abrogated.

3. That the foregoing additions and amendments to the Federal Rules of Criminal Procedure, together with the abrogation of Rule 58 and the Official Forms, shall take effect on August 1, 1983 and shall govern all criminal proceedings thereafter commenced and, insofar as just and practicable, in proceedings then pending.

4. That THE CHIEF JUSTICE be, and he hereby is, authorized to transmit to the Congress the foregoing additions to and changes in the Federal Rules of Criminal Procedure in accordance with the provisions of Sections 3771 and 3772 of Title 18, United States Code.

SUPREME COURT OF THE UNITED STATES

RE: PROPOSED AMENDMENTS TO FEDERAL RULES OF CRIMINAL PROCEDURE

[April 28, 1983]

JUSTICE O'CONNOR filed a dissenting statement.

With one minor reservation, I join the Court in its adoption of the proposed amendments. They represent the product of considerable effort by the Advisory Committee, and they will institute desirable reforms. My sole disagreement with the Court's action today lies in its failure to recommend correction of an apparent error in the drafting of Proposed Rule 12.2(e).

As proposed, Rule 12.2(e) reads:

> "Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention."

Identical language formerly appeared in Fed. Rules Crim. Proc. 11(e)(6) and Fed. Rules Evid. 410, each of which stated that

> "[Certain material] is not admissible in any civil or criminal proceeding against the defendant."

Those rules were amended, Supreme Court Order April 30, 1979, 441 U. S. 970, 987, 1007, Pub. Law 96–42, approved July 31, 1979, 93 Stat. 326. After the amendments, the relevant language read,

> "[Certain material] is not, in any civil or criminal proceeding, admissible against the defendant."

As the Advisory Committee explained, this minor change was necessary to eliminate an ambiguity. Before the

amendment, the word "against" could be read as referring either to the kind of proceeding in which the evidence was offered or to the purpose for which it was offered. Thus, for instance, if a person was a witness in a suit but not a party, it was unclear whether the evidence could be used to impeach him. In such a case, the *use* would be against the person, but the *proceeding* would not be against him. Similarly, if the person wished to introduce the evidence in a proceeding in which he was the defendant, the use, but not the proceeding, would be against him. To eliminate the ambiguity, the Advisory Committee proposed the amendment clarifying that the evidence was inadmissible against the person, regardless of whether the particular proceeding was against the person. See Adv. Comm. Note to Fed. Rules Crim. Proc. 11(e)(6); Adv. Comm. Note to Fed. Rules Evid. 410.

The same ambiguity inheres in the proposed version of Rule 12.2(e). We should recommend that it be eliminated now. To that extent, I respectfully dissent.

AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE

Rule 6. The Grand Jury

* * *

(e) RECORDING AND DISCLOSURE OF PROCEEDINGS.

* * *

(3) Exceptions.

* * *

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made —

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding;

(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury; or

(iii) when the disclosure is made by an attorney for the government to another federal grand jury.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) shall be filed in the district where the grand

best copy available

jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the government, the petitioner shall serve written notice of the petition upon (i) the attorney for the government, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard.

(E) If the judicial proceeding giving rise to the petition is in a federal district court in another district, the court shall transfer the matter to that court unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper. The court shall order transmitted to the court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy. The court to which the matter is transferred shall afford the aforementioned persons a reasonable opportunity to appear and be heard.

* * *

(5) Closed hearing. Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(6) Sealed records. Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

* * *

(g) DISCHARGE AND EXCUSE. A grand jury shall serve until discharged by the court, but no grand jury may serve more than 18 months unless the court extends the service of the grand jury for a period of six months or less upon a determination that such extension is in the public interest. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

Rule 11. Pleas

(a) ALTERNATIVES.

(1) In General. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) Conditional pleas. With the approval of the court and the consent of the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. If the

defendant prevails on appeal, he shall be allowed to withdraw his plea.

* * *

(h) HARMLESS ERROR. Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.

Rule 12. Pleadings and Motions Before Trial; Defenses and Objections

* * *

(i) PRODUCTION OF STATEMENTS AT SUPPRESSION HEARING. Except as herein provided, rule 26.2 shall apply at a hearing on a motion to suppress evidence under subdivision (b)(3) of this rule. For purposes of this subdivision, a law enforcement officer shall be deemed a witness called by the government, and upon a claim of privilege the court shall excise the portions of the statement containing privileged matter.

Rule 12.2 Notice of Insanity Defense or Expert Testimony of Defendant's Mental Condition

* * *

(b) EXPERT TESTIMONY OF DEFENDANT'S MENTAL CONDITION. If a defendant intends to introduce expert testimony relating to a mental disease or defect or any other mental condition of the defendant bearing upon the issue of his guilt, he shall, within the time provided for the filing of pretrial motions or at such later

time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) MENTAL EXAMINATION OF DEFENDANT. In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to a mental examination by a psychiatrist or other expert designated for this purpose in the order of the court. No statement made by the defendant in the course of any examination provided for by this rule, whether the examination be with or without the consent of the defendant, no testimony by the expert based upon such statement, and no other fruits of the statement shall be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony.

(d) FAILURE TO COMPLY. If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental condition.

(e) INADMISSIBILITY OF WITHDRAWN INTENTION. Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

Rule 16. Discovery and Inspection

• • •

(a) DISCLOSURE OF EVIDENCE BY THE GOVERNMENT.

• • •

(3) Grand Jury Transcripts. Except as provided in Rules 6, 12(i) and 26.2, and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

Rule 23. Trial by Jury or by the Court

• • •

(b) JURY OF LESS THAN TWELVE. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or that a valid verdict may be returned by a jury of less than 12 should the court find it necessary to excuse one or more jurors for any just cause after trial commences. Even absent such stipulation, if the court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court a valid verdict may be returned by the remaining 11 jurors.

Rule 32. Sentence and Judgment

(a) SENTENCE.

(1) Imposition of Sentence. Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall

(A) determine that the defendant and his counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)(3)(B);

(B) afford counsel an opportunity to speak on behalf of the defendant; and

(C) address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

The attorney for the government shall have an equivalent opportunity to speak to the court.

* * *

(c) PRESENTENCE INVESTIGATION.

* * *

(3) Disclosure.

(A) At a reasonable time before imposing sentence the court shall permit the defendant and his counsel to read the report of the presentence investigation exclusive of any recommendation as to sentence, but not to the

extent that in the opinion of the court the report contains diagnostic opinions which, if disclosed, might seriously disrupt a program of rehabilitation; or sources of information obtained upon a promise of confidentiality; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons. The court shall afford the defendant and his counsel an opportunity to comment on the report and, in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in it.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant and his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material which may be disclosed to the defendant and his counsel shall be disclosed to the attorney for the government.

(D) If the comments of the defendant and his counsel or testimony or other information introduced by them

allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Bureau of Prisons or the Parole Commission.

(E) Any copies of the presentence investigation report made available to the defendant and his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion, otherwise directs.

(F) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Parole Commission pursuant to 18 U.S.C. §§ 4205(c), 4252, 5010(e), or 5037(c) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

(d) PLEA WITHDRAWAL. If a motion for withdrawal of a plea of guilty or nolo contendere is made before sentence is imposed,

imposition of sentence is suspended, or disposition is had under 18 U.S.C. § 4205(c), the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. At any later time, a plea may be set aside only on direct appeal or by motion under 28 U.S.C. § 2255.

• • •

Rule 35. Correction or Reduction of Sentence

• • •

(b) REDUCTION OF SENTENCE. The court may reduce a sentence within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

Rule 55. Records

The clerk of the district court and each United States magistrate shall keep records in criminal proceedings in such form as the Director of the Administrative Office of the United States Courts may prescribe. The clerk shall enter in the records each order or judgment of the court and the date such entry is made.

[Rule 58. Forms] (Abrogated)

[APPENDIX OF FORMS]

(Abrogated)

EXCERPT FROM THE REPORT OF THE JUDICIAL CONFERENCE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

TO THE CHIEF JUSTICE OF THE UNITED STATES, CHAIRMAN; AND MEMBERS OF THE JUDICIAL CONFERENCE OF THE UNITED STATES

I. Federal Rules of Criminal Procedure

The Advisory Committee on the Federal Rules of Criminal Procedure has submitted to your Committee proposed amendments to Rules 6(e) and (g), 11(a) and (h), 12.2(b), (c) and (d), 16(a), 23(b), 32(a), (c) and (d), 35(b), and 55; proposed new Rules 12(i) and 12.2(e); and the abrogation of Rule 58, Federal Rules of Criminal Procedure. The amendments and new rules proposed by the Advisory Committee are set out in Appendix B and are accompanied by Advisory Committee Notes explaining their purpose and intent. A summary of the work of the Advisory Committee in formulating these proposed amendments is set out in a report from the Committee Chairman.

Your Committee recommends that these proposed amendments and new rules be approved by the Conference and transmitted to the Supreme Court for its consideration with a recommendation that they be approved by the Court and transmitted to the Congress pursuant to law.

APPENDIX B

TO: THE COMMITTEE ON RULES OF PRACTICE AND PROCEDURE

On behalf of the Advisory Committee on Criminal Rules, I transmit herewith various proposals to amend the Federal Rules of Criminal Procedure which, except where otherwise specifically noted, were circulated to the bench and bar in October, 1981, and were the subject of open hearings in Washington, D.C., Chicago, Illinois, and San Francisco, California, during February, 1982. Transcripts of the public hearings have been made available to all members of our Committee, and all written comments from interested persons have been similarly reviewed by the Committee.

We have concluded at our Committee meeting on June 17-18, 1982 to reject parts of certain proposals previously circulated, and in several instances we have deferred action until our next meeting pending further study of these matters.

RULE 6 — THE GRAND JURY

Rule 6(e)(2) - We have concluded to delete the underlined portion suggested in the draft circulated to the bench and bar as we feel that it is unnecessary.

Rule 6(e)(3)(A)(i) - We decided to delete the underlined words of the proposal which read "to enforce federal criminal law". On May 3, 1982, the Supreme Court granted certiorari in United States v. Sells Engineering, Inc., and the issue in that case may decide the question presented by the proposed rule change. If the issue is not decided by the Sells case, this question, will be further considered by the Committee. Stated otherwise, it has been temporarily deferred as to the deleted words.

Rule 6(e)(3)(C)(ii) has been deleted as considered unnecessary. This will require the renumbering of the following two subdivisions.

Rule 6(e)(3)(C)(iv), which will be renumbered as (iii), providing for disclosure by an attorney for the government to another grand jury, has been adopted as being consistent with existing practice, although not heretofore covered by a specific rule.

Rule 6(e)(3)(D) has been adopted with the following modifications: the deletion of "or (ii)" on line 60 because (ii) was previously deleted as being unnecessary; the deletion of the words

"and is seeking disclosure for its own use" on lines 62 and 63; the change of the word "shall" to "may" on line 64.

Rule 6(e)(3)(E) was adopted with the following modifications: the word "may" on line 74 will read "shall"; the words "only if it cannot" on line 75 have been changed and, in lieu thereof, the words "unless it can" have been substituted; the words "on the need for disclosure" on line 84 have been deleted.

Rule 6(e)(5), as proposed beginning on line 86, has been revised to read as follows: "Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury. This is the complete new subdivision (5), the balance being deemed unnecessary. We have further considered the recent case of In Re Rosahn, 671 F.2d 690 (2nd Cir. 1982), and realize that constitutional questions may arise with respect to requirements of an open hearing in contempt proceedings, especially where the accused insists upon a public trial. See, Levine v. United States, 362 U.S. 610 (1960).

Rule 6(e)(6) was adopted as proposed. See lines 93-96, both inclusive.

Rule 6(g) was adopted as proposed. See lines 98-107, both inclusive.

RULE 11 - PLEAS

Rule 11(a)(2), relating to conditional pleas, was adopted with the following modification: on line 12, the words "afforded the opportunity" were deleted and, in lieu thereof, the word "allowed" was inserted.

Rule 11(h), Harmless Error, was adopted as proposed.

RULE 12 - PLEADINGS AND MOTIONS BEFORE TRIAL; DEFENSES AND OBJECTION

Rule 12(i) was adopted with one modification: the word "federal" on line 5 was deleted.

RULE 12.2 - NOTICE OF INSANITY DEFENSE OR EXPERT TESTIMONY OF DEFENDANT'S MENTAL CONDITION

Rule 12.2 was adopted with the following modifications: on line 9, delete the words "or innocence"; beginning with the words "No statement" appearing on line 22, delete the balance of that paragraph and insert in lieu thereof, the following:

> "No statement made by the defendant in the course of any examination provided for by this rule, whether the examination shall be with or without the consent of the defendant, and no testimony by the expert based upon such statement or other fruits of the statement shall be admitted in evidence against the defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony."

The Committee adopted Rule 12.2(d) as proposed.

The Committee added a new subdivision (e) reading as follows:

> "(e) INADMISSIBILITY OF WITHDRAWN INTENTION. Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention."

RULE 23. TRIAL BY JURY OR BY THE COURT

The Committee had previously circulated alternative proposals to the bench and bar; one an amendment to Rule 23(b) dealing with the discretionary right of the judge to permit a valid verdict to be returned by the remaining 11 jurors, if a juror became ill or otherwise unable to serve after the jury had retired to consider its verdict; the other proposed amendments to Rules 24(c) and (d), providing for the retention of one or more alternate jurors and, if a regular juror was unable or disqualified to perform his or her duties, an alternate juror could be substituted with the court instructing the entire jury to commence their deliberations anew.

By an 8 to 2 vote, the Committee decided to approve Rule 23(b) in the form proposed and circulated. Thus, proposed Rules 24(c) and (d) were abandoned.

RULE 32 - SENTENCE AND JUDGMENT

Rule 32(a)(1)(A) was approved as circulated. As to proposed Rule 32(c)(3)(A), the Committee voted to reject the proposed required disclosure of the probation officer's recommendation as to the sentence, and to reincorporate the words "exclusive of any recommendation as to sentence" which now appears in present Rule 32(c)(3)(1).

Other modifications are: in Proposed Rule 32(c)(3)(A), delete the word "entire" on line 25; delete the words "recommendations of" appearing at the end of line 28 and the first word on line 29; reinsert lines 41 through 48 which were inadvertently deleted in error; under (C) on lines 51-53, modify to read:

> "(C) Any material which may be disclosed to the defendant and his counsel shall be disclosed to the attorney for the government."

The Committee adopted subdivision (D) appearing on lines 54 through 67, and further adopted the minor change in the wording of proposed (E) which now appears in the existing rules as (D).

The Committee also adopted the proposed revisions to Rule 32(d) relating to the Plea Withdrawal, all as circulated to the bench and bar.

RULE 35 - CORRECTION OR REDUCTION OF SENTENCE

The Committee adopted the proposal to clarify Rule 35(b) to provide for authority to consider a reduced sentence following revocation of probation. This is the one proposal which was unanimously approved by the bench and bar.

RULE 41 - SEARCH AND SEIZURE

The Committee deferred action on the proposed amendment to Rule 41(a), (b) and (h) until our next meeting. The deferral does not reflect the Committee's acceptance or rejection of the proposed modifications.

RULE 43.1 - EXCLUSION OF PUBLIC TO AVOID JURY PREJUDICE

The proposed new rule quite naturally promoted the most comment from the bench, bar and media, the latter having been specifically invited to present its views. While the media's position is that of absolute opposition, as we anticipated, there were many

other questions raised as to our original proposal and we concluded that extensive modifications would have to be made which may necessitate a recirculation of any modified proposal. We, therefore, voted to defer further action until the next meeting of the Committee.

MINOR AMENDMENTS - NOT CIRCULATED

(1) Rule 16(a)(3), relating to Grand Jury Transcripts, was approved for modification due to the recent promulgation of Rule 26.2 and the proposed adoption of Rule 12(i). It will read as follows:

"(3) Grand Jury Transcripts. Except as provided in Rules 6, 12(i) and 26.2, and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of recorded proceedings of a grand jury."

Of course, if Rule 12(i) - as proposed - does not finally meet with approval, this will require the deletion of any reference to Rule 12(i), but will still require a modification to include the reference to Rule 26.2.

(2) Rule 55 was adopted to read as follows:

"Rule 55. Records. The clerk of the district court and each United States magistrate shall keep records in criminal proceedings in such form as the Director of the Administrative Office of the United States Courts may prescribe. The clerk shall enter in the records each order or judgment of the court and the date such entry is made."

This proposed Rule 55 was previously submitted, in slightly different form, to the Standing Committee and we were asked to reconsider the matter. We believe the present proposal meets the previous possible objections. We were directed not to include Rule 55 in our distribution to the bench and bar.

(3) Rule 58. Forms.

After some discussion, the Committee voted to abrogate this Rule 58 in its entirety, including all forms. A proposed revision was submitted, but the Committee felt that the present forms, last revised in 1949, were too obsolete.

NEW PROPOSALS DEFERRED OR OTHERWISE REFERRED TO ANOTHER COMMITTEE

(1) A proposal to amend Rule 49, the filing of a Dangerous Offender Notice, was deferred to our next meeting. This problem was presented in the case of United States v. Gaylor, No. 80-5016, decided by the Fourth Circuit in 1981, in an unpublished opinion. It will be considered at our next meeting and, in our opinion, need not be circulated to the bench and bar.

(2) A proposal to clarify what standard should be applied following probation revocation and whether bail pending appeal should be granted is, in the opinion of the Committee, a matter for the Committee on Appellate Rules, and the Secretary, Joseph F. Spaniol, Jr., is respectfully requested to take such action as may be necessary.

(3) The Judicial Conference of the Ninth Circuit has adopted resolutions seeking the amendment of Rule 30 with respect to (1) the time when the court should charge the jury, either before or after the final arguments of counsel, (2) the mandatory furnishing of instructions to counsel before the final arguments of counsel, and (3) the mandatory furnishing of a copy of the charge to the jury upon retiring.

The Committee voted to defer action on this proposal until our next meeting.

(4) The Department of Justice has proposed further amendments to Rule 6(e)(3)(A)(ii) and a new addition to Rule 6(e)(3)(C). The Committee voted to defer action on these proposals until our next meeting.

This completes our report as to actions taken at our meeting on June 17-18, 1982. The Chairman or Reporter will be pleased to respond to further inquiries from the Committee on Rules of Practice and Procedure.

Respectfully submitted,

WALTER E. HOFFMAN, Chairman,
Advisory Committee on
Criminal Rules

July 21, 1982

PROPOSED AMENDMENTS TO THE FEDERAL RULES OF CRIMINAL PROCEDURE*

Rule 6. The Grand Jury

* * *

(e) RECORDING AND DISCLOSURE OF PROCEEDINGS.

* * *

(3) Exceptions.

* * *

(C) Disclosure otherwise prohibited by this rule of matters occurring before the grand jury may also be made —

(i) when so directed by a court preliminarily to or in connection with a judicial proceeding; or

(ii) when permitted by a court at the request of the defendant, upon a showing that grounds may exist for a motion to dismiss the indictment because of matters occurring before the grand jury; or

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*New matter is underscored; matter to be omitted is lined through.

(iii) when the disclosure is made by an attorney for the government to another federal grand jury.

If the court orders disclosure of matters occurring before the grand jury, the disclosure shall be made in such manner, at such time, and under such conditions as the court may direct.

(D) A petition for disclosure pursuant to subdivision (e)(3)(C)(i) shall be filed in the district where the grand jury convened. Unless the hearing is ex parte, which it may be when the petitioner is the government, the petitioner shall serve written notice of the petition upon (i) the attorney for the government, (ii) the parties to the judicial proceeding if disclosure is sought in connection with such a proceeding, and (iii) such other persons as the court may direct. The court shall afford those persons a reasonable opportunity to appear and be heard.

(E) If the judicial proceeding giving rise to the petition is in a federal district court in another district, the court shall transfer the matter to that court unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether

disclosure is proper. The court shall order transmitted to the court to which the matter is transferred the material sought to be disclosed, if feasible, and a written evaluation of the need for continued grand jury secrecy. The court to which the matter is transferred shall afford the aforementioned persons a reasonable opportunity to appear and be heard.

* * *

(5) Closed hearing. Subject to any right to an open hearing in contempt proceedings, the court shall order a hearing on matters affecting a grand jury proceeding to be closed to the extent necessary to prevent disclosure of matters occurring before a grand jury.

(6) Sealed records. Records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for such time as is necessary to prevent disclosure of matters occurring before a grand jury.

* * *

(g) DISCHARGE AND EXCUSE. A grand jury shall serve until discharged by the court, but no grand jury may serve more than 18 months unless the court extends the service of the grand jury for a period of six months or less upon a determination that such extension is in the public interest.

The tenure and powers of a grand jury are not affected by the beginning or expiration of a term of court. At any time for cause shown the court may excuse a juror either temporarily or permanently, and in the latter event the court may impanel another person in place of the juror excused.

ADVISORY COMMITTEE NOTE

Rule 6(e)(3)(C)

New subdivision (e)(3)(C)(iii) recognizes that it is permissible for the attorney for the government to make disclosure of matters occurring before one grand jury to another federal grand jury. Even absent a specific provision to that effect, the courts have permitted such disclosure in some circumstances. See, e.g., United States v. Socony-Vacuum Oil Co., 310 U.S. 150 (1940); United States v. Garcia, 420 F.2d 309 (2d Cir. 1970). In this kind of situation, "[s]ecrecy of grand jury materials should be protected almost as well by the safeguards at the second grand jury proceeding, including the oath of the jurors, as by judicial supervision of the disclosure of such materials." United States v. Malatesta, 583 F.2d 748 (5th Cir. 1978).

Rule 6(e)(3)(D)

In Douglas Oil Co. v. Petrol Stops Northwest, 441 U.S. 211 (1979), the Court held on the facts there presented that it was an abuse of discretion for the district judge to order disclosure of grand jury transcripts for use in civil proceedings in another district where that judge had insufficient knowledge of those proceedings to make a determination of the need for disclosure. The Court suggested a "better practice" on those facts, but declared that "procedures to deal with the many variations are best left to the rulemaking procedures established by Congress."

The first sentence of subdivision (e)(3)(D) makes it clear that when disclosure is sought under subdivision (e)(2)(C)(i), the petition is to be filed in the district where the grand jury was convened, whether or not it is the district of the "judicial proceeding" giving rise to the petition. Courts which have addressed the question have generally taken this view, e.g., Illinois v. Serbaugh, 522 F.2d 768 (7th Cir. 1977). As stated in Douglas Oil,

those who seek grand jury transcripts have little choice other than to file a request with the court that supervised the grand jury, as it is the only court with control over the transcripts.

Quite apart from the practical necessity, the policies underlying Rule 6(e) dictate that the grand jury's supervisory court participate in reviewing such requests, as it is in the best position to determine the continuing need for grand jury secrecy. Ideally, the judge who supervised the grand jury should review the request for disclosure, as he will have firsthand knowledge of the grand jury's activities. But even other judges of the district where the grand jury sat may be able to discover facts affecting the need for secrecy more easily than would judges from elsewhere around the country. The records are in the custody of the District Court, and therefore are readily available for references. Moreover, the personnel of that court—particularly those of the United States Attorney's Office who worked with the grand jury—are more likely to be informed about the grand jury proceedings than those in a district that had no prior experience with the subject of the request.

The second sentence requires the petitioner to serve notice of his petition upon several persons who, by the third sentence, are recognized as entitled to appear and be heard on the matter. The notice requirement ensures that all interested parties, if they wish, may make a timely appearance. Absent such notice, these persons, who then might only learn of the order made in response to the motion after it was entered, have had to resort to the cumbersome and inefficient procedure of a motion to vacate the order. In re Special February 1971 Grand Jury v. Conlisk, 490 F.2d 894 (7th Cir. 1973).

Though some authority is to be found that parties to the judicial proceeding giving rise to the motion are not entitled to intervene, in that "the order to produce was not directed to" them, United States v. American Oil Co., 456 F.2d 1043 (3d Cir. 1972), that position was rejected in Douglas Oil, where it was noted that such persons have standing "to object to the disclosure order, as release of the transcripts to their civil adversaries could result in substantial injury to them." As noted in Illinois v. Sarbaugh, supra,

while present rule 6(e) "omits to state whether any one is entitled to object to disclosure," the rule

> seems to contemplate a proceeding of some kind, judicial proceedings are not normally ex parte, and persons in the situation of the intervenors [parties to the civil proceeding] are likely to be the only ones to object to an order for disclosure. If they are not allowed to appear, the advantages of an adversary proceeding are lost.

If the judicial proceeding is a class action, notice to the representative is sufficient.

The amendment also recognizes that the attorney for the government in the district where the grand jury convened also has an interest in the matter and should be allowed to be heard. It may sometimes be the case, as in Douglas Oil, that the prosecutor will have relatively little concern for secrecy, at least as compared with certain parties to the civil proceeding. Nonetheless, it is appropriate to recognize that generally the attorney for the government is entitled to be heard so that he may represent what Douglas Oil characterizes as "the public interest in secrecy," including the government's legitimate concern about "the possible effect upon the functioning of future grand juries" of unduly liberal disclosure.

The second sentence leaves it to the court to decide whether any other persons should receive notice and be allowed to intervene. This is appropriate, for the necessity for and feasibility of involving others may vary substantially from case to case. In Douglas Oil, it was noted that the individual who produced before the grand jury the information now sought has an interest in the matter:

> Fear of future retribution or social stigma may act as powerful deterrents to those who would come forward and aid the grand jury in the performance of its duties. Concern as to the future consequences of frank and full testimony is heightened where the witness is an employee of a company under investigation.

Notice to such persons, however is by no means inevitably necessary, and in some cases the information sought may have reached the grand jury from such a variety of sources that it is not practicable to involve these sources in the disclosure proceeding. Similarly,

while Douglas Oil notes that rule 6(e) secrecy affords "protection of the innocent accused from disclosure of the accusation made against him before the grand jury," it is appropriate to leave to the court whether that interest requires representation directly by the grand jury target at this time. When deemed necessary to protect the identity of such other persons, it would be a permissible alternative for the government or the court directly to give notice to these other persons, and thus the rule does not foreclose such action.

The notice requirement in the second sentence is inapplicable if the hearing is to be ex parte. The legislative history of rule 6(e) states: "It is contemplated that the judicial hearing in connection with an application for a court order by the government, under subparagraph (3)(C)(i) should be ex parte so as to preserve, to the maximum extent possible, grand jury secrecy." S.Rep. No. 95-354, 1977 U.S. Code Cong. & Admin. News p. 532. Although such cases are distinguishable from other cases arising under this subdivision because internal regulations limit further disclosure of information disclosed to the government, the rule provides only that the hearing "may" be ex parte when the petitioner is the government. This allows the court to decide that matter based upon the circumstances of the particular case. For example, an ex parte proceeding is much less likely to be appropriate if the government acts as petitioner as an accommodation to, e.g., a state agency.

Rule 6(e)(3)(E)

Under the first sentence in new subdivision (e)(3)(E), the petitioner or any intervenor might seek to have the matter transferred to the federal district court where the judicial proceeding giving rise to the petition is pending. Usually it will be the petitioner, who is seeking disclosure, who will desire the transfer, but this is not inevitably the case. An intervenor might seek transfer on the ground that the other court, with greater knowledge of the extent of the need, would be less likely to conclude "that the material * * * is needed to avoid a possible injustice" (the test under Douglas Oil). The court may transfer on its own motion, for as noted in Douglas Oil, if transfer is the better course of action it should not be foreclosed "merely because the parties have failed to specify the relief to which they are entitled."

It must be emphasized that transfer is proper only if the proceeding giving rise to the petition "is in federal district court in another district." If, for example, the proceeding is located in another district but is at the state level, a situation encompassed within rule 6(e)(3)(C)(i), In re Special February 1971 Grand Jury v.

Conlisk, supra, there is no occasion to transfer. Ultimate resolution of the matter cannot be placed in the hands of the state court, and in such a case the federal court in that place would lack what Douglas Oil recognizes as the benefit to be derived from transfer: "first-hand knowledge of the litigation in which the transcripts allegedly are needed." Formal transfer is unnecessary in intradistrict cases, even when the grand jury court and judicial proceeding court are not in the same division.

As stated in the first sentence, transfer by the court is appropriate "unless it can reasonably obtain sufficient knowledge of the proceeding to determine whether disclosure is proper." (As reflected by the "whether disclosure is proper" language, the amendment makes no effort to define the disclosure standard; that matter is currently governed by Douglas Oil and the authorities cited therein, and is best left to elaboration by future case law.) The amendment expresses a preference for having the disclosure issue decided by the grand jury court. Yet, it must be recognized, as stated in Douglas Oil, that often this will not be possible because

> the judges of the court having custody of the grand jury transcripts will have no first-hand knowledge of the litigation in which the transcripts allegedly are needed, and no practical means by which such knowledge can be obtained. In such a case, a judge in the district of the grand jury cannot weigh in an informed manner the need for disclosure against the need for maintaining grand jury secrecy.

The penultimate sentence provides that upon transfer the transferring court shall order transmitted the material sought to be disclosed and also a written evaluation of the need for continuing grand jury secrecy. Because the transferring court is in the best position to assess the interest in continued grand jury secrecy in the particular instance, it is important that the court which will now have to balance that interest against the need for disclosure receive the benefit of the transferring court's assessment. Transmittal of the material sought to be disclosed will not only facilitate timely disclosure if it is thereafter ordered, but will also assist the other court in deciding how great the need for disclosure actually is. For example, with that material at hand the other court will be able to determine if there is any inconsistency between certain grand jury testimony and testimony received in the other judicial proceeding. The rule recognizes, however, that there may be instances in which transfer of everything sought to be disclosed is not feasible. See, e.g., In re 1975-2 Grand Jury Investigation, 566 F.2d 1293 (5th Cir.

1978) (court ordered transmittal of "an inventory of the grand jury subpoenas, transcripts, and documents," as the materials in question were "exceedingly voluminous, filling no less than 55 large file boxes and one metal filing cabinet").

The last sentence makes it clear that in a case in which the matter is transferred to another court, that court should permit the various interested parties specified in the rule to be heard. Even if those persons were previously heard before the court which ordered the transfer, this will not suffice. The order of transfer did not decide the ultimate issue of "whether a particularized need for disclosure outweighs the interest in continued grand jury secrecy," Douglas Oil, supra, which is what now remains to be resolved by the court to which transfer was made. Cf. In re 1975-2 Grand Jury Investigation, supra, holding that a transfer order is not appealable because it does not determine the ultimate question of disclosure, and thus "[n]o one has yet been aggrieved and no one will become aggrieved until [the court to which the matter was transferred acts."

Rule 6(e)(5)

This addition to rule 6 would make it clear that certain hearings which would reveal matters which have previously occurred before a grand jury or are likely to occur before a grand jury with respect to a pending or ongoing investigation must be conducted in camera in whole or in part in order to prevent public disclosure of such secret information. One such hearing is that conducted under subdivision (e)(3)(D), for it will at least sometimes be necessary to consider and assess some of the "matters occurring before the grand jury" in order to decide the disclosure issue. Two other kinds of hearings at which information about a particular grand jury investigation might need to be discussed are those at which the question is whether to grant a grand jury witness immunity or whether to order a grand jury witness to comply fully with the terms of a subpoena directed to him.

A recent GAO study established that there is considerable variety in the practice as to whether such hearings are closed or open, and that open hearings often seriously jeopardize grand jury secrecy:

> For judges to decide these matters, the witness' relationship to the case under investigation must be discussed. Accordingly, the identities of witnesses and targets, the nature of expected testimony, and the extent to which the witness is cooperating are often revealed during preindictment proceedings. Because the matters discussed can compromise the purposes of grand jury secrecy, some judges close the

> preindictment proceedings to the public and the press; others do not. When the proceeding is open, information that may otherwise be kept secret under rule 6(e) becomes available to the public and the press. . . .
>
> Open preindictment proceedings are a major source of information which can compromise the purposes of grand jury secrecy. In 25 cases we were able to establish links between open proceedings and later newspaper articles containing information about the identities of witnesses and targets and the nature of grand jury investigations.

Comptroller General, More Guidance and Supervision Needed over Federal Grand Jury Proceedings 8-9 (Oct. 16, 1980).

The provisions of rule 6(e)(5) do not violate any constitutional right of the public or media to attend such pretrial hearings. There is no Sixth Amendment right in the public to attend pretrial proceedings, Gannett Co., Inc. v. DePasquale, 443 U.S. 368 (1979), and Richmond Newspapers, Inc. v. Virginia, 448 U.S. 555, (1980), only recognizes a First Amendment "right to attend criminal trials." Richmond Newspapers was based largely upon the "unbroken, uncontradicted history" of public trials, while in Gannett it was noted "there exists no persuasive evidence that at common law members of the public had any right to attend pretrial proceedings." Moreover, even assuming some public right to attend certain pretrial proceedings, see United States v. Criden, 675 F.2d 550 (3d Cir. 1982), that right is not absolute; it must give way, as stated in Richmond Newspapers, to "an overriding interest" in a particular case in favor of a closed proceeding. By permitting closure only "to the extent necessary to prevent disclosure of matters occurring before a grand jury," rule 6(e)(5) recognizes the longstanding interest in the secrecy of grand jury proceedings. Counsel or others allowed to be present at the closed hearing may be put under a protective order by the court.

Subdivision (e)(5) is expressly made "subject to any right to an open hearing in contempt proceedings." This will accommodate any First Amendment right which might be deemed applicable in that context because of the proceedings' similarities to a criminal trial, cf. United States v. Criden, supra, and also any Fifth or Sixth Amendment right of the contemnor. The latter right clearly exists as to a criminal contempt proceeding, In re Oliver, 333 U.S. 257 (1948), and some authority is to be found recognizing such a right in civil contempt proceedings as well. In re Rosahn, 671 F.2d 690 (2d Cir. 1982). This right of the contemnor must be requested by him

and, in any event, does not require that the entire contempt proceedings, including recitation of the substance of the questions he has refused to answer, be public. Levine v. United States, 362 U.S. 610 (1960).

Rule 6(e)(6)

Subdivision (e)(6) provides that records, orders and subpoenas relating to grand jury proceedings shall be kept under seal to the extent and for so long as is necessary to prevent disclosure of matters occurring before a grand jury. By permitting such documents as grand jury subpoenas and immunity orders to be kept under seal, this provision addresses a serious problem of grand jury secrecy and expressly authorizes a procedure now in use in many but not all districts. As reported in Comptroller General, More Guidance and Supervision Needed over Federal Grand Jury Proceedings 10, 14 (Oct. 16, 1980):

> In 262 cases, documents presented at open preindictment proceedings and filed in public files revealed details of grand jury investigations. These documents are, of course, available to anyone who wants them, including targets of investigations. [There are] two documents commonly found in public files which usually reveal the identities of witnesses and targets. The first document is a Department of Justice authorization to a U.S. attorney to apply to the court for a grant of immunity for a witness. The second document is the court's order granting the witness immunity from prosecution and compelling him to testify and produce requested information.
> * * *
>
> Subpoenas are the fundamental documents used during a grand jury's investigation because through subpoenas, grand juries can require witnesses to testify and produce documentary evidence for their consideration. Subpoenas can identify witnesses, potential targets, and the nature of an investigation. Rule 6(e) does not provide specific guidance on whether a grand jury's subpoena should be kept secret. Additionally, case law has not consistently stated whether the subpoenas are protected by rule 6(e).
>
> District courts still have different opinions about whether grand jury subpoenas should be kept secret. Out of 40 Federal District Courts we

contacted, 36 consider these documents to be secret. However, 4 districts do make them available to the public.

Rule 6(g)

In its present form, subdivision 6(g) permits a grand jury to serve no more than 18 months after its members have been sworn, and absolutely no exceptions are permitted. (By comparison, under the Organized Crime Control Act of 1970, Title I, 18 U.S.C. §§ 3331-3334, special grand juries may be extended beyond their basic terms of 18 months if their business has not been completed.) The purpose of the amendment is to permit some degree of flexibility as to the discharge of grand juries where the public interest would be served by an extension.

As noted in United States v. Fein, 504 F.2d 1170 (2d Cir. 1974), upholding the dismissal of an indictment returned 9 days after the expiration of the 18-month period but during an attempted extension, under the present inflexible rule "it may well be that criminal proceedings which would be in the public interest will be frustrated and that those who might be found guilty will escape trial and conviction." The present inflexible rule can produce several undesirable consequences, especially when complex fraud, organized crime, tax or antitrust cases are under investigation: (i) wastage of a significant amount of time and resources by the necessity of presenting the case once again to a successor grand jury simply because the matter could not be concluded before the term of the first grand jury expired; (ii) precipitous action to conclude the investigation before the expiration date of the grand jury; and (iii) potential defendants may be kept under investigation for a longer time because of the necessity to present the matter again to another grand jury.

The amendment to subdivision 6(g) permits extension of a regular grand jury only "upon a determination that such extension is in the public interest." This permits some flexibility, but reflects the fact that extension of regular grand juries beyond 18 months is to be the exception and not the norm. The intention of the amendment is to make it possible for a grand jury to have sufficient extra time to wind up an investigation when, for example, such extension becomes necessary because of the unusual nature of the case or unforeseen developments.

Because terms of court have been abolished, 28 U.S.C. § 138, the second sentence of subdivision 6(g) has been deleted.

Rule 11. Pleas

(a) ALTERNATIVES.

(1) In General. A defendant may plead not guilty, guilty, or nolo contendere. If a defendant refuses to plead or if a defendant corporation fails to appear, the court shall enter a plea of not guilty.

(2) Conditional pleas. With the approval of the court and the consent of the government, a defendant may enter a conditional plea of guilty or nolo contendere, reserving in writing the right, on appeal from the judgment, to review of the adverse determination of any specified pretrial motion. If the defendant prevails on appeal, he shall be allowed to withdraw his plea.

• • •

(h) HARMLESS ERROR. Any variance from the procedures required by this rule which does not affect substantial rights shall be disregarded.

ADVISORY COMMITTEE NOTE

Rule 11(a)

There are many defenses, objections and requests which a defendant must ordinarily raise by pretrial motion. See, e.g., 18 U.S.C. § 3162(a)(2); Fed.R.Crim.P.12(b). Should that motion be

denied, interlocutory appeal of the ruling by the defendant is seldom permitted. See United States v. MacDonald, 435 U.S. 850 (1978) (defendant may not appeal denial of his motion to dismiss based upon Sixth Amendment speedy trial grounds); DiBella v. United States, 369 U.S. 121 (1962) (defendant may not appeal denial of pretrial motion to suppress evidence); compare Abney v. United States, 431 U.S. 651 (1977) (interlocutory appeal of denial of motion to dismiss on double jeopardy grounds permissible). Moreover, should the defendant thereafter plead guilty or nolo contendere, this will usually foreclose later appeal with respect to denial of the pretrial motion. "When a criminal defendant has solemnly admitted in open court that he is in fact guilty of the offense with which he is charged, he may not thereafter raise independent claims relating to the deprivation of constitutional rights that occurred prior to the entry of the guilty plea." Tollett v. Henderson, 411 U.S. 258, (1973). Though a nolo plea differs from a guilty plea in other respects, it is clear that it also constitutes a waiver of all nonjurisdictional defects in a manner equivalent to a guilty plea. Lott v. United States, 367 U.S. 421 (1961).

As a consequence, a defendant who has lost one or more pretrial motions will often go through an entire trial simply to preserve the pretrial issues for later appellate review. This results in a waste of prosecutorial and judicial resources, and causes delay in the trial of other cases, contrary to the objectives underlying the Speedy Trial Act of 1974, 18 U.S.C. § 3161 et seq. These unfortunate consequences may be avoided by the conditional plea device expressly authorized by new subdivision (a)(2).

The development of procedures to avoid the necessity for trials which are undertaken for the sole purpose of preserving pretrial objections has been consistently favored by the commentators. See ABA Standards Relating to the Administration of Criminal Justice, standard 21-1.3(c) (2d ed. 1978); Model Code of Pre-Arraignment Procedure § SS 290.1(4)(b) (1975); Uniform Rules of Criminal Procedure, rule 444(d) (Approved Draft, 1974); 1 C. Wright, Federal Practice and Procedure — Criminal § 175 (1969); 3 W. LaFave, Search and Seizure § 11.1 (1978). The Supreme Court has characterized the New York practice, whereby appeals from suppression motions may be appealed notwithstanding a guilty plea, as a "commendable effort to relieve the problem of congested trial calendars in a manner that does not diminish the opportunity for the assertion of rights guaranteed by the Constitution." Lefkowitz v. Newsome, 420 U.S. 283, 293 (1975). That Court has never discussed conditional pleas as such, but has permitted without comment a federal appeal on issues preserved by a conditional plea. Jaben v. United States, 381 U.S. 214 (1965).

In the absence of specific authorization by statute or rule for a conditional plea, the circuits have divided on the permissibility of the practice. Two circuits have actually approved the entry of conditional pleas, United States v. Burke, 517 F.2d 377 (2d Cir. 1975); United States v. Moskow, 588 F.2d 882 (3d Cir. 1978); and two others have praised the conditional plea concept, United States v. Clark, 459 F.2d 977 (8th Cir. 1972); United States v. Dorsey, 449 F.2d 1104 (D.C.Cir. 1971). Three circuits have expressed the view that a conditional plea is logically inconsistent and thus improper, United States v. Brown, 499 F.2d 829 (7th Cir. 1974); United States v. Sepe, 472 F.2d 784, aff'd en banc, 486 F.2d 1044 (5th Cir. 1973); United States v. Cox, 464 F.2d 937 (6th Cir. 1972); three others have determined only that conditional pleas are not now authorized in the federal system, United States v. Benson, 579 F.2d 508 (9th Cir. 1978); United States v. Nooner, 565 F.2d 633 (10th Cir. 1977); United States v. Matthews, 472 F.2d 1173 (4th Cir. 1973); while one circuit has reserved judgment on the issue, United States v. Warwar, 478 F.2d 1183 (1st Cir. 1973). (At the state level, a few jurisdictions by statute allow appeal from denial of a motion to suppress notwithstanding a subsequent guilty plea, Cal. Penal Code § 1538.5(m); N.Y.Crim. Proc. Law § 710.20(1); Wis.Stat.Ann. § 971.31(10), but in the absence of such a provision the state courts are also in disagreement as to whether a conditional plea is permissible; see cases collected in Comment, 26 U.C.L.A.L.Rev. 360, 373 (1978).)

The conditional plea procedure provided for in subdivision (a)(2) will, as previously noted, serve to conserve prosecutorial and judicial resources and advance speedy trial objectives. It will also produce much needed uniformity in the federal system on this matter; see United States v. Clark, supra, noting the split of authority and urging resolution by statute or rule. Also, the availability of a conditional plea under specified circumstances will aid in clarifying the fact that traditional, unqualified pleas do constitute a waiver of nonjurisdictional defects. See United States v. Nooner, supra (defendant sought appellate review of denial of pretrial suppression motion, despite his prior unqualified guilty plea, claiming the Second Circuit conditional plea practice led him to believe a guilty plea did not bar appeal of pretrial issues).

The obvious advantages of the conditional plea procedure authorized by subdivision (a)(2) are not outweighed by any significant or compelling disadvantages. As noted in Comment, supra, at 375: "Four major arguments have been raised by courts disapproving of conditioned pleas. The objections are that the procedure encourages a flood of appellate litigation, militates against achieving finality in

the criminal process, reduces effectiveness of appellate review due to the lack of a full trial record, and forces decision on constitutional questions that could otherwise be avoided by invoking the harmless error doctrine." But, as concluded therein, those "arguments do not withstand close analysis." Ibid.

As for the first of those arguments, experience in states which have permitted appeals of suppression motions notwithstanding a subsequent plea of guilty is most relevant, as conditional pleas are likely to be most common when the objective is to appeal that kind of pretrial ruling. That experience has shown that the number of appeals has not increased substantially. See Comment, 9 Hous.L.Rev. 305, 315-19 (1971). The minimal added burden at the appellate level is certainly a small price to pay for avoiding otherwise unnecessary trials.

As for the objection that conditional pleas conflict with the government's interest in achieving finality, it is likewise without force. While it is true that the conditional plea does not have the complete finality of the traditional plea of guilty or nolo contendere because "the essence of the agreement is that the legal guilt of the defendant exists only if the prosecution's case" survives on appeal, the plea

> continues to serve a partial state interest in finality, however, by establishing admission of the defendant's factual guilt. The defendant stands guilty and the proceedings come to an end if the reserved issue is ultimately decided in the government's favor.

Comment, 26 U.C.L.A. L.Rev. 360, 378 (1978).

The claim that the lack of a full trial record precludes effective appellate review may on occasion be relevant. Cf. United States v. MacDonald, supra (holding interlocutory appeal not available for denial of defendant's pretrial motion to dismiss on speedy trial grounds, and noting that "most speedy trial claims * * * are best considered only after the relevant facts have been developed at trial"). However, most of the objections which would likely be raised by pretrial motion and preserved for appellate review by a conditional plea are subject to appellate resolution without a trial record. Certainly this is true as to the very common motion to suppress evidence, as is indicated by the fact that appellate courts presently decide such issues upon interlocutory appeal by the government.

With respect to the objection that conditional pleas circumvent application of the harmless error doctrine, it must be acknowledged that "[a]bsent a full trial record, containing all the government's evidence against the defendant, invocation of the harmless error rule is arguably impossible." Comment, supra, at 380. But, the harmless error standard with respect to constitutional objections is sufficiently high, see Chapman v. California, 386 U.S. 18 (1967), that relatively few appellate decisions result in affirmance upon that basis. Thus it will only rarely be true that the conditional plea device will cause an appellate court to consider constitutional questions which could otherwise have been avoided by invocation of the doctrine of harmless error.

To the extent that these or related objections would otherwise have some substance, they are overcome by the provision in Rule 11(a)(2) that the defendant may enter a conditional plea only "with the approval of the court and the consent of the government." (In this respect, the rule adopts the practice now found in the Second Circuit.) The requirement of approval by the court is most appropriate, as it ensures, for example, that the defendant is not allowed to take an appeal on a matter which can only be fully developed by proceeding to trial; cf. United States v. MacDonald, supra. As for consent by the government, it will ensure that conditional pleas will be allowed only when the decision of the court of appeals will dispose of the case either by allowing the plea to stand or by such action as compelling dismissal of the indictment or suppressing essential evidence. Absent such circumstances, the conditional plea might only serve to postpone the trial and require the government to try the case after substantial delay, during which time witnesses may be lost, memories dimmed, and the offense grown so stale as to lose jury appeal. The government is in a unique position to determine whether the matter at issue would be case-dispositive, and, as a party to the litigation, should have an absolute right to refuse to consent to potentially prejudicial delay. Although it was suggested in United States v. Moskow, supra, that the government should have no right to prevent the entry of a conditional plea because a defendant has no comparable right to block government appeal of a pretrial ruling pursuant to 18 U.S.C. § 3731, that analogy is unconvincing. That statute requires the government to certify that the appeal is not taken for purposes of delay. Moreover, where the pretrial ruling is case-dispositive, § 3731 is the only mechanism by which the government can obtain appellate review, but a defendant may always obtain review by pleading not guilty.

Unlike the state statutes cited earlier, Rule 11 (a)(2) is not limited to instances in which the pretrial ruling the defendant wishes to appeal was in response to defendant's motion to suppress evidence. Though it may be true that the conditional plea device will be most commonly employed as to such rulings, the objectives of the rule are well served by extending it to other pretrial rulings as well. See, e.g., ABA Standards, supra (declaring the New York provision "should be enlarged to include other pretrial defenses"); Uniform Rules of Criminal Procedure, rule 444 (d) (Approved Draft, 1974) ("any pretrial motion which, if granted, would be dispositive of the case").

The requirement that the conditional plea be made by the defendant "reserving in writing the right to appeal from the adverse determination of any specified pretrial motion," though extending beyond the Second Circuit practice, will ensure careful attention to any conditional plea. It will document that a particular plea was in fact conditional, and will identify precisely what pretrial issues have been preserved for appellate review. By requiring this added step, it will be possible to avoid entry of a conditional plea without the considered acquiescence of the government (see United States v. Burke, supra, holding that failure of the government to object to entry of a conditional plea constituted consent) and post-plea claims by the defendant that his plea should be deemed conditional merely because it occurred after denial of his pretrial motions (see United States v. Nooner, supra).

It must be emphasized that the only avenue of review of the specified pretrial ruling permitted under a rule 11(a)(2) conditional plea is an appeal, which must be brought in compliance with Fed.R.App.P. 4(b). Relief via 28 U.S.C. § 2255 is not available for this purpose.

The Supreme Court has held that certain kinds of constitutional objections may be raised after a plea of guilty. Menna v. New York, 423 U.S. 61 (1975) (double jeopardy violation); Blackledge v. Perry, 417 U.S. 21 (1974) (due process violation by charge enhancement following defendant's exercise of right to trial de novo). Subdivision 11(a)(2) has no application to such situations, and should not be interpreted as either broadening or narrowing the Menna-Blackledge doctrine or as establishing procedures for its application.

Rule 11(h)

Subdivision (h) makes clear that the harmless error rule of Rule 52(a) is applicable to Rule 11. The provision does not, however, attempt to define the meaning of "harmless error," which is left to the case law. Prior to the amendments which took effect on Dec. 1, 1975, Rule 11 was very brief; it consisted of but four sentences. The 1975 amendments increased significantly the procedures which must be undertaken when a defendant tenders a plea of guilty or nolo contendere, but this change was warranted by the "two principal objectives" then identified in the Advisory Committee Note: (1) ensuring that the defendant has made an informed plea; and (2) ensuring that plea agreements are brought out into the open in court. An inevitable consequence of the 1975 amendments was some increase in the risk that a trial judge, in a particular case, might inadvertently deviate to some degree from the procedure which a very literal reading of Rule 11 would appear to require.

This being so, it became more apparent than ever that Rule 11 should not be given such a crabbed interpretation that ceremony was exalted over substance. As stated in United States v. Scarf, 551 F.2d 1124 (8th Cir. 1977), concerning amended Rule 11: "It is a salutary rule, and district courts are required to act in substantial compliance with it although * * * ritualistic compliance is not required." As similarly pointed out in United States v. Saft, 558 F.2d 1073 (2d Cir. 1977),

> the Rule does not say that compliance can be achieved only by reading the specified items in haec verba. Congress meant to strip district judges of freedom to decide what they must explain to a defendant who wishes to plead guilty, not to tell them precisely how to perform this important task in the great variety of cases that would come before them. While a judge who contents himself with literal application of the Rule will hardly be reversed, it cannot be supposed that Congress preferred this to a more meaningful explanation, provided that all the specified elements were covered.

Two important points logically flow from these sound observations. One concerns the matter of construing Rule 11: it is not to be read as requiring a litany or other ritual which can be carried out only by word-for-word adherence to a set "script." The other, specifically addressed in new subdivision (h), is that even when it may be concluded Rule 11 has not been complied with in all

respects, it does not inevitably follow that the defendant's plea of guilty or nolo contendere is invalid and subject to being overturned by any remedial device then available to the defendant.

Notwithstanding the declaration in Rule 52(a) that "[a]ny error, defect, irregularity or variance which does not affect substantial rights shall be disregarded," there has existed for some years considerable disagreement concerning the applicability of the harmless error doctrine to Rule 11 violations. In large part, this is attributable to uncertainty as to the continued vitality and the reach of McCarthy v. United States, 394 U.S. 459 (1969). In McCarthy, involving a direct appeal from a plea of guilty because of noncompliance with Rule 11, the Court concluded

> that prejudice inheres in a failure to comply with Rule 11, for noncompliance deprives the defendant of the Rule's procedural safeguards, which are designed to facilitate a more accurate determination of the voluntariness of his plea. Our holding [is] that a defendant whose plea has been accepted in violation of Rule 11 should be afforded the opportunity to plead anew * * *.

McCarthy has been most frequently relied upon in cases where, as in that case, the defendant sought relief because of a Rule 11 violation by the avenue of direct appeal. It has been held that in such circumstances a defendant's conviction must be reversed whenever the "district court accepts his guilty plea without fully adhering to the procedure provided for in Rule 11," United States v. Boone, 543 F.2d 1090 (4th Cir. 1976), and that in this context any reliance by the government on the Rule 52(a) harmless error concept "must be rejected." United States v. Journet, 544 F.2d 633 (2d Cir. 1976). On the other hand, decisions are to be found taking a harmless error approach on direct appeal where it appeared the nature and extent of the deviation from Rule 11 was such that it could not have had any impact on the defendant's decision to plead or the fairness in now holding him to his plea. United States v. Peters, No. 77-1700 (4th Cir., Dec. 22, 1978) (where judge failed to comply fully with Rule 11(c)(1), in that defendant not correctly advised of maximum years of special parole term but was told it is at least 3 years, and defendant thereafter sentenced to 15 years plus 3-year special parole term, government's motion for summary affirmance granted, as "the error was harmless"); United States v. Coronado, 554 F.2d 166 (5th Cir. 1977) (court first holds that charge of conspiracy requires some explanation of what conspiracy means to comply with Rule 11(c)(1), but then finds no reversible error "because the rule 11 proceeding on its face discloses, despite the

trial court's failure sufficiently to make the required explication of the charges, that Coronado understood them").

But this conflict has not been limited to cases involving nothing more than a direct appeal following defendant's plea. For example, another type of case is that in which the defendant has based a post-sentence motion to withdraw his plea on a Rule 11 violation. Rule 32(d) says that such a motion may be granted "to correct manifest injustice," and some courts have relied upon this latter provision in holding that post-sentence plea withdrawal need not be permitted merely because Rule 11 was not fully complied with and that instead the district court should hold an evidentiary hearing to determine "whether manifest injustice will result if the conviction based on the guilty plea is permitted to stand." United States v. Scarf, 551 F.2d 1124 (8th Cir. 1977). Others, however, have held that McCarthy applies and prevails over the language of Rule 32(d), so that "a failure to scrupulously comply with Rule 11 will invalidate a plea without a showing of manifest injustice." United States v. Cantor, 469 F.2d 435 (3d Cir. 1972).

Disagreement has also existed in the context of collateral attack upon pleas pursuant to 28 U.S.C. § 2255. On the one hand, it has been concluded that "[n]ot every violation of Rule 11 requires that the plea be set aside" in a § 2255 proceeding, and that "a guilty plea will be set aside on collateral attack only where to not do so would result in a miscarriage of justice, or where there exists exceptional circumstances justifying such relief." Evers v. United States, 579 F.2d 71 (10th Cir. 1978). The contrary view was that McCarthy governed in § 2255 proceedings because "the Supreme Court hinted at no exceptions to its policy of strict enforcement of Rule 11." Timmreck v. United States, 577 F.2d 377 (6th Cir. 1978). But a unanimous Supreme Court resolved this conflict in United States v. Timmreck, 441 U.S. 780 (1979), where the Court concluded that the reasoning of Hill v. United States, 368 U.S. 424 (1962) (ruling a collateral attack could not be predicated on a violation of Rule 32(a))

> is equally applicable to a formal violation of Rule 11.
> * * *
>
> Indeed, if anything, this case may be a stronger one for foreclosing collateral relief than the Hill case. For the concern with finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas.

> "Every inroad on the concept of finality undermines confidence in the integrity of our procedures; and, by increasing the volume of judicial work, inevitably delays and impairs the orderly administration of justice. The impact is greatest when new grounds for setting aside guilty pleas are approved because the vast majority of criminal convictions result from such pleas. Moreover, the concern that unfair procedures may have resulted in the conviction of an innocent defendant is only rarely raised by a petition to set aside a guilty plea."

This interest in finality is strongest in the collateral attack context the Court was dealing with in Timmreck, which explains why the Court there adopted the Hill requirement that in a § 2255 proceeding the rule violation must amount to "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure." The interest in finality of guilty pleas described in Timmreck is of somewhat lesser weight when a direct appeal is involved (so that the Hill standard is obviously inappropriate in that setting), but yet is sufficiently compelling to make unsound the proposition that reversal is required even where it is apparent that the Rule 11 violation was of the harmless error variety.

Though the McCarthy per se rule may have been justified at the time and in the circumstances which obtained when the plea in that case was taken, this is no longer the case. For one thing, it is important to recall that McCarthy dealt only with the much simpler pre-1975 version of Rule 11, which required only a brief procedure during which the chances of a minor, insignificant and inadvertent deviation were relatively slight. This means that the chances of a truly harmless error (which was not involved in McCarthy in any event, as the judge made no inquiry into the defendant's understanding of the nature of the charge, and the government had presented only the extreme argument that a court "could properly assume that petitioner was entering that plea with a complete understanding of the charge against him" merely from the fact he had stated he desired to plead guilty) are much greater under present Rule 11 than under the version before the Court in McCarthy. It also means that the more elaborate and lengthy procedures of present Rule 11, again as compared with the version applied in McCarthy, make it more apparent than ever that a guilty plea is not "a mere gesture, a temporary and meaningless formality

reversible at the defendant's whim," but rather " 'a grave and solemn act,' which is 'accepted only with care and discernment.' " United States v. Barker, 514 F.2d 208 (D.C.Cir.1975), quoting from Brady v. United States, 397 U.S. 742 (1970). A plea of that character should not be overturned, even on direct appeal, when there has been a minor and technical violation of Rule 11 which amounts to harmless error.

Secondly, while McCarthy involved a situation in which the defendant's plea of guilty was before the court of appeals on direct appeal, the Supreme Court appears to have been primarily concerned with § 2255-type cases, for the Court referred exclusively to cases of that kind in the course of concluding that a per se rule was justified as to Rule 11 violations because of "the difficulty of achieving [rule 11's] purposes through a post-conviction voluntariness hearing." But that reasoning has now been substantially undercut by United States v. Timmreck, supra, for the Court there concluded § 2255 relief "is not available when all that is shown is a failure to comply with the formal requirements of the Rule," at least absent "other aggravating circumstances," which presumably could often only be developed in the course of a later evidentiary hearing.

Although all of the aforementioned considerations support the policy expressed in new subdivision (h), the Advisory Committee does wish to emphasize two important cautionary notes. The first is that subdivision (h) should not be read as supporting extreme or speculative harmless error claims or as, in effect, nullifying important Rule 11 safeguards. There would not be harmless error under subdivision (h) where, for example, as in McCarthy, there had been absolutely no inquiry by the judge into defendant's understanding of the nature of the charge and the harmless error claim of the government rests upon nothing more than the assertion that it may be "assumed" defendant possessed such understanding merely because he expressed a desire to plead guilty. Likewise, it would not be harmless error if the trial judge totally abdicated to the prosecutor the responsibility for giving to the defendant the various Rule 11 warnings, as this "results in the creation of an atmosphere of subtle coercion that clearly contravenes the policy behind Rule 11." United States v. Crook, 526 F.2d 708 (5th Cir. 1976).

Indeed, it is fair to say that the kinds of Rule 11 violations which might be found to constitute harmless error upon direct appeal are fairly limited, as in such instances the matter "must be resolved solely on the basis of the Rule 11 transcript" and the other portions (e.g., sentencing hearing) of the limited record made in such

cases. United States v. Coronado, supra. Illustrative are: where the judge's compliance with subdivision (c)(1) was not absolutely complete, in that some essential element of the crime was not mentioned, but the defendant's responses clearly indicate his awareness of that element, see United States v. Coronado, supra; where the judge's compliance with subdivision (c)(2) was erroneous in part in that the judge understated the maximum penalty somewhat, but the penalty actually imposed did not exceed that indicated in the warnings, see United States v. Peters, supra; and where the judge completely failed to comply with subdivision (c)(5), which of course has no bearing on the validity of the plea itself, cf. United States v. Sinagub, supra.

The second cautionary note is that subdivision (h) should not be read as an invitation to trial judges to take a more casual approach to Rule 11 proceedings. It is still true, as the Supreme Court pointed out in McCarthy, that thoughtful and careful compliance with Rule 11 best serves the cause of fair and efficient administration of criminal justice, as it

> will help reduce the great waste of judicial resources required to process the frivolous attacks on guilty plea convictions that are encouraged, and are more difficult to dispose of, when the original record is inadequate. It is, therefore, not too much to require that, before sentencing defendants to years of imprisonment, district judges take the few minutes necessary to inform them of their rights and to determine whether they understand the action they are taking.

Subdivision (h) makes no change in the responsibilities of the judge at Rule 11 proceedings, but instead merely rejects the extreme sanction of automatic reversal.

It must also be emphasized that a harmless error provision has been added to Rule 11 because some courts have read McCarthy as meaning that the general harmless error provision in Rule 52(a) cannot be utilized with respect to Rule 11 proceedings. Thus, the addition of subdivision (h) should not be read as suggesting that Rule 52(a) does not apply in other circumstances because of the absence of a provision comparable to subdivision (h) attached to other rules.

Rule 12. Pleadings and Motions Before Trial; Defenses and Objections

* * *

(i) PRODUCTION OF STATEMENTS AT SUPPRESSION HEARING. Except as herein provided, rule 26.2 shall apply at a hearing on a motion to suppress evidence under subdivision (b)(3) of this rule. For purposes of this subdivision, a law enforcement officer shall be deemed a witness called by the government, and upon a claim of privilege the court shall excise the portions of the statement containing privileged matter.

ADVISORY COMMITTEE NOTE

Rule 12(i)

As noted in the recent decision of United States v. Raddatz, 447 U.S. 667 (1980), hearings on pretrial suppression motions not infrequently necessitate a determination of the credibility of witnesses. In such a situation, it is particularly important, as also highlighted by Raddatz, that the record include some other evidence which tends to either verify or controvert the assertions of the witness. (This is especially true in light of the Raddatz holding that a district judge, in order to make an independent evaluation of credibility, is not required to rehear testimony on which a magistrate based his findings and recommendations following a suppression hearing before the magistrate.) One kind of evidence which can often fulfill this function is prior statements of the testifying witness, yet courts have consistently held that in light of the Jencks Act, 18 U.S.C. § 3500, such production of statements cannot be compelled at a pretrial suppression hearing. United States v. Spagnuolo, 515 F.2d 818 (9th Cir. 1975); United States v. Sebastian, 497 F.2d 1267 (2nd Cir. 1974); United States v. Montos, 421 F.2d 215 (5th Cir. 1970). This result, which finds no express Congressional approval in the legislative history of the Jencks Act, see United States v. Sebastian, supra; United States v. Covello, 410 F.2d 536 (2d Cir. 1969), would be obviated by new subdivision (i) of rule 12.

This change will enhance the accuracy of the factual determinations made in the context of pretrial suppression hearings. As noted in United States v. Sebastian, supra, it can be argued

> most persuasively that the case for pre-trial disclosure is strongest in the framework of a suppression hearing. Since findings at such a hearing as to admissibility of challenged evidence will often determine the result at trial and, at least in the case of fourth amendment suppression motions, cannot be relitigated later before the trier of fact, pre-trial production of the statements of witnesses would aid defense counsel's impeachment efforts at perhaps the most crucial point in the case. * * * [A] government witness at the suppression hearing may not appear at trial so that defendants could never test his credibility with the benefits of Jencks Act material.

The latter statement is certainly correct, for not infrequently a police officer who must testify on a motion to suppress as to the circumstances of an arrest or search will not be called at trial because he has no information necessary to the determination of defendant's guilt. See, e.g., United States v. Spagnuolo, supra (dissent notes that "under the prosecution's own admission, it did not intend to produce at trial the witnesses called at the pre-trial suppression hearing"). Moreover, even if that person did testify at the trial, if that testimony went to a different subject matter, then under rule 26.2(c) only portions of prior statements covering the same subject matter need be produced, and thus portions which might contradict the suppression hearing testimony would not be revealed. Thus, while it may be true, as declared in United States v. Montos, supra, that "due process does not require premature production at pre-trial hearings on motions to suppress of statements ultimately subject to discovery under the Jencks Act," the fact of the matter is that those statements — or, the essential portions thereof — are not necessarily subject to later discovery.

Moreover, it is not correct to assume that somehow the problem can be solved by leaving the suppression issue "open" in some fashion for resolution once the trial is under way, at which time the prior statements will be produced. In United States v. Spagnuolo, supra, the court responded to the defendant's dilemma of inaccessible prior statements by saying that the suppression motion could simply be deferred until trial. But, under the current version

of rule 12 this is not possible; subdivision (b) declares that motions to suppress "must" be made before trial, and subdivision (e) says such motions cannot be deferred for determination at trial "if a party's right to appeal is adversely affected," which surely is the case as to suppression motions. As for the possibility of the trial judge reconsidering the motion to suppress on the basis of prior statements produced at trial and casting doubt on the credibility of a suppression hearing witness, it is not a desirable or adequate solution. For one thing, as already noted, there is no assurance that the prior statements will be forthcoming. Even if they are, it is not efficient to delay the continuation of the trial to undertake a reconsideration of matters which could have been resolved in advance of trial had the critical facts then been available. Furthermore, if such reconsideration is regularly to be expected of the trial judge, then this would give rise on appeal to unnecessary issues of the kind which confronted the court in United States v. Montos, supra — whether the trial judge was obligated either to conduct a new hearing or to make a new determination in light of the new evidence.

The second sentence of subdivision (i) provides that a law enforcement officer is to be deemed a witness called by the government. This means that when such a federal, state or local officer has testified at a suppression hearing, the defendant will be entitled to any statement of the officer in the possession of the government and relating to the subject matter concerning which the witness has testified, without regard to whether the officer was in fact called by the government or the defendant. There is considerable variation in local practice as to whether the arresting or searching officer is considered the witness of the defendant or of the government, but the need for the prior statement exists in either instance.

The second sentence of subdivision (i) also provides that upon a claim of privilege the court is to excise the privileged matter before turning over the statement. The situation most likely to arise is that in which the prior statement of the testifying officer identifies an informant who supplied some or all of the probable cause information to the police. Under McCray v. Illinois, 386 U.S. 300 (1967), it is for the judge who hears the motion to decide whether disclosure of the informant's identity is necessary in the particular case. Of course, the government in any case may prevent disclosure of the informant's identity by terminating reliance upon information from that informant.

Rule 12.2 Notice of Insanity Defense or Expert Testimony of Defendant's Based Upon Mental Condition

* * *

(b) ~~MENTAL DISEASE OR DEFECT INCONSISTENT WITH THE MENTAL ELEMENT REQUIRED FOR THE OFFENSE CHARGED~~ EXPERT TESTIMONY OF DEFENDANT'S MENTAL CONDITION. If a defendant intends to introduce expert testimony relating to a mental disease, or defect, or any other mental condition of the defendant bearing upon the issue of ~~whether he had the mental state required for the offense charged~~ his guilt, he shall, within the time provided for the filing of pretrial motions or at such later time as the court may direct, notify the attorney for the government in writing of such intention and file a copy of such notice with the clerk. The court may for cause shown allow late filing of the notice or grant additional time to the parties to prepare for trial or make such other order as may be appropriate.

(c) ~~PSYCHIATRIC~~ MENTAL EXAMINATION OF DEFENDANT. In an appropriate case the court may, upon motion of the attorney for the government, order the defendant to submit to a ~~psychiatric~~ mental examination by a psychiatrist or other expert designated for this purpose in the order of the court. No statement made by the accused

defendant in the course of any examination provided for by this rule, whether the examination ~~shall~~ be with or without the consent of the ~~accused~~ defendant, no testimony by the expert based upon such statement, and no other fruits of the statement shall be admitted in evidence against the ~~accused~~ ~~on the issue of guilt~~ defendant in any criminal proceeding except on an issue respecting mental condition on which the defendant has introduced testimony.

(d) FAILURE TO COMPLY. If there is a failure to give notice when required by subdivision (b) of this rule or to submit to an examination when ordered under subdivision (c) of this rule, the court may exclude the testimony of any expert witness offered by the defendant on the issue of his mental ~~state~~ condition.

(e) INADMISSIBILITY OF WITHDRAWN INTENTION. Evidence of an intention as to which notice was given under subdivision (a) or (b), later withdrawn, is not admissible in any civil or criminal proceeding against the person who gave notice of the intention.

ADVISORY COMMITTEE NOTE

Rule 12.2(b)

Courts have recently experienced difficulty with the question of what kind of expert testimony offered for what purpose falls within the notice requirement of rule 12.2(b). See, e.g., United States v. Hill, 655 F.2d 512 (3d Cir. 1980) (rule not applicable to

tendered testimony of psychologist concerning defendant's susceptibility of inducement, offered to reinforce defendant's entrapment defense); United States v Webb, 625 F.2d 709 (5th Cir. 1980) (rule not applicable to expert testimony tendered to show that defendant lacked the "propensity to commit a violent act," as this testimony was offered "to prove that Webb did not commit the offense charged," shooting at a helicopter, "not that certain conduct was unaccompanied by criminal intent"); United States v. Perl, 584 F.2d 1316 (4th Cir. 1978) (because entrapment defense properly withheld from jury, it was unnecessary to decide if the district court erred in holding rule applicable to tendered testimony of the doctor that defendant had increased susceptibility to suggestion as a result of medication he was taking); United States v. Olson, 576 F.2d 1267 (8th Cir. 1978) (rule applicable to tendered testimony of an alcoholism and drug therapist that defendant was not responsible for his actions because of a problem with alcohol); United States v. Staggs, 553 F.2d 1073 (7th Cir. 1977) (rule applicable to tendered testimony of psychologist that defendant, charged with essaulting federal officer, was more likely to hurt himself than to direct his aggressions toward others, as this testimony bears upon whether defendant intended to put victim in apprehension when he picked up the gun).

What these cases illustrate is that expert testimony about defendant's mental condition may be tendered in a wide variety of circumstances well beyond the situation clearly within rule 12.2(b), i.e., where a psychiatrist testifies for the defendant regarding his diminished capacity. In all of these situations and others like them, there is good reason to make applicable the notice provisions of rule 12.2(b). This is because in all circumstances in which the defendant plans to offer expert testimony concerning his mental condition at the time of the crime charged, advance disclosure to the government will serve "to permit adequate pretrial preparation, to prevent surprise at trial, and to avoid the necessity of delays during trial." 2 A.B.A. Standards for Criminal Justice 11-55 (2d 1980). Thus, while the district court in United States v. Hill, 481 F.Supp. 558 (E.D.Pa. 1979), incorrectly concluded that present rule 12.2(b) covers testimony by a psychologist bearing on the defense of entrapment, the court quite properly concluded that the government would be seriously disadvantaged by lack of notice. This would have meant that the government would not have been equipped to cross-examine the expert, that any expert called by the government would not have had an opportunity to hear the defense expert testify, and that the government would not have had an opportunity to conduct the kind of investigation needed to acquire rebuttal testimony on defendant's claim that he was especially susceptible to inducement.

Consequently, rule 12.2(b) has been expanded to cover all of the aforementioned situations.

Rule 12.2(c)

The amendment of the first sentence of subdivision (c), recognizing that the government may seek to have defendant subjected to a mental examination by an expert other than a psychiatrist, is prompted by the same considerations discussed above. Because it is possible that the defendant will submit to examination by an expert of his own other than a psychiatrist, it is necessary to recognize that it will sometimes be appropriate for defendant to be examined by a government expert other than a psychiatrist.

The last sentence of subdivision (c) has been amended to more accurately reflect the Fifth Amendment considerations at play in this context. See Estelle v. Smith, 451 U.S. 454 (1981), holding that self-incrimination protections are not inevitably limited to the guilt phase of a trial and that the privilege, when applicable, protects against use of defendant's statement and also the fruits thereof, including expert testimony based upon defendant's statements to the expert. Estelle also intimates that "a defendant can be required to submit to a sanity examination," and presumably some other form of mental examination, when "his silence may deprive the State of the only effective means it has of controverting his proof on an issue that he interjected into the case."

Rule 12.2(d)

The broader term "mental condition" is appropriate here in light of the above changes to subdivisions (b) and (c).

Rule 12.2(e)

New subdivision (e), generally consistent with the protection afforded in rule 12.1(f) with respect to notice of alibi, ensures that the notice required under subdivision (b) will not deprive the defendant of an opportunity later to elect not to utilize any expert testimony. This provision is consistent with Williams v. Florida, 399 U.S. 78 (1970), holding the privilege against self-incrimination is not violated by requiring the defendant to give notice of a defense where the defendant retains the "unfettered choice" of abandoning the defense.

Rule 16. Discovery and Inspection

* * *

(a) DISCLOSURE OF EVIDENCE BY THE GOVERNMENT.

* * *

(3) Grand Jury Transcripts. Except as provided in Rules 6, 12(i) and 26.2, and subdivision (a)(1)(A) of this rule, these rules do not relate to discovery or inspection of recorded proceedings of a grand jury.

ADVISORY COMMITTEE NOTE

Rule 16(a)(3)

The added language is made necessary by the addition of Rule 26.2 and new subdivision (i) of Rule 12, which contemplate the production of statements, including those made to a grand jury, under specified circumstances.

Rule 23. Trial by Jury or by the Court

* * *

(b) JURY OF LESS THAN TWELVE. Juries shall be of 12 but at any time before verdict the parties may stipulate in writing with the approval of the court that the jury shall consist of any number less than 12 or that a valid verdict may be returned by a jury of less than 12 should the court find it necessary to excuse one or more jurors for any just cause after trial commences. Even absent such stipulation, if the

court finds it necessary to excuse a juror for just cause after the jury has retired to consider its verdict, in the discretion of the court a valid verdict may be returned by the remaining 11 jurors.

ADVISORY COMMITTEE NOTE

Rule 23(b)

The amendment to subdivision (b) addresses a situation which does not occur with great frequency but which, when it does occur, may present a most difficult issue concerning the fair and efficient administration of justice. This situation is that in which, after the jury has retired to consider its verdict and any alternate jurors have been discharged, one of the jurors is seriously incapacitated or otherwise found to be unable to continue service upon the jury. The problem is acute when the trial has been a lengthy one and consequently the remedy of mistrial would necessitate a second expenditure of substantial prosecution, defense and court resources. See, e.g., United States v. Meinster, 464 F.Supp. 442 (S.D.Fla. 1980), aff'd sub nom. United States v. Phillips, 664 F.2d 971 (5th Cir. 1981) (juror had heart attack during deliberations after "well over four months of trial"); United States v. Barone, 83 F.R.D. 565 (S.D. Fla. 1979) (juror removed upon recommendation of psychiatrist during deliberations after "approximately six months of trial").

It is the judgment of the Committee that when a juror is lost during deliberations, especially in circumstances like those in Barone and Meinster, it is essential that there be available a course of action other than mistrial. Proceeding with the remaining 11 jurors, though heretofore impermissible under rule 23(b) absent stipulation by the parties and approval of the court, United States v. Taylor, 507 F.2d 166 (5th Cir. 1975), is constitutionally permissible. In Williams v. Florida, 399 U.S. 78 (1970), the Court concluded

> the fact that the jury at common law was composed of precisely 12 is an historical accident, unnecessary to effect the purposes of the jury system and wholly without significance "except to mystics." * * * To read the Sixth Amendment as forever codifying a feature so incidental to the real purpose of the Amendment is to ascribe a blind formalism to the

> Framers which would require considerably more evidence than we have been able to discover in the history and language of the Constitution or in the reasoning of our past decisions. * * * Our holding does no more than leave these considerations to Congress and the States, unrestrained by an interpretation of the Sixth Amendment which would forever dictate the precise number which can constitute a jury.

Williams held that a six-person jury was constitutional because such a jury had the "essential feature of a jury," i.e., "the interposition between the accused and his accuser of the common-sense judgment of a group of laymen, and in the community participation and shared responsibility which results from that group's determination of guilt or innocence," necessitating only a group "large enough to promote group deliberation, free from outside attempts at intimidation, and to provide a fair possibility for obtaining a representative cross section of the community." This being the case, quite clearly the occasional use of a jury of slightly less than 12, as contemplated by the amendment to rule 23(b), is constitutional. Though the alignment of the Court and especially the separate opinion by Justice Powell in Apodoca v. Oregon, 406 U.S. 404 (1972), makes it at best uncertain whether less-than-unanimous verdicts would be constitutionally permissible in federal trials, it hardly follows that a requirement of unanimity of a group slightly less than 12 is similarly suspect.

The Meinster case clearly reflects the need for a solution other than mistrial. There twelve defendants were named in a 36-count, 100-page indictment for RICO offenses and related violations, and the trial lasted more than four months. Before the jury retired for deliberations, the trial judge inquired of defense counsel whether they would now agree to a jury of less than 12 should a juror later be unable to continue during the deliberations which were anticipated to be lengthy. All defense counsel rejected that proposal. When one juror was excused a day later after suffering a heart attack, all defense counsel again rejected the proposal that deliberations continue with the remaining 11 jurors. Thus, the solution now provided in rule 23(b), stipulation to a jury of less than 12, was not possible in that case, just as it will not be possible in any case in which defense counsel believe some tactical advantage will be gained by retrial. Yet, to declare a mistrial at that point would have meant that over four months of trial time would have gone for naught and that a comparable period of time would have to be expended on retrial. For a variety of reasons, not the least of which

is the impact such a retrial would have upon that court's ability to comply with speedy trial limits in other cases, such a result is most undesirable.

That being the case, it is certainly understandable that the trial judge in Meinster (as in Barone) elected to substitute an alternate juror at that point. Given the rule 23(b) bar on a verdict of less than 12 absent stipulation, United States v. Taylor, supra, such substitution seemed the least objectionable course of action. But in terms of what change in the Federal Rules of Criminal Procedure is to be preferred in order to facilitate response to such situations in the future, the judgment of the Advisory Committee is that it is far better to permit the deliberations to continue with a jury of 11 than to make a substitution at that point.

In rejecting the substitution-of-juror alternative, the Committee's judgment is in accord with that of most commentators and many courts.

> There have been proposals that the rule should be amended to permit an alternate to be substituted if a regular juror becomes unable to perform his duties after the case has been submitted to the jury. An early draft of the original Criminal Rules had contained such a provision, but it was withdrawn when the Supreme Court itself indicated to the Advisory Committee on Criminal Rules doubts as to the desirability and constitutionality of such a procedure. These doubts are as forceful now as they were a quarter century ago. To permit substitution of an alternate after deliberations have begun would require either that the alternate participate though he has missed part of the jury discussion, or that he sit in with the jury in every case on the chance he might be needed. Either course is subject to practical difficulty and to strong constitutional objection.

Wright, Federal Practice and Procedure § 388 (1969). See also Moore, Federal Practice par. 24.05 (2d ed. Cipes 1980) ("The inherent coercive effect upon an alternate who joins a jury leaning heavily toward a guilty verdict may result in the alternate reaching a premature guilty verdict"); 3 ABA Standards for Criminal Justice § 15-2.7, commentary (2d ed. 1980) ("it is not desirable to allow a juror who is unfamiliar with the prior deliberations to suddenly join the group and participate in the voting without the benefit of earlier

group discussion"); United States v. Lamb, 529 F.2d 1153 (9th Cir. 1975); People v. Ryan, 19 N.Y.2d 100, 224 N.E.2d 710 (1966). Compare People v. Collins, 17 Cal.3d 687, 131 Cal.Rptr. 782, 522 P.2d 742 (1976); Johnson v. State, 267 Ind. 256, 396 N.E.2d 623 (1977).

The central difficulty with substitution, whether viewed only as a practical problem or a question of constitutional dimensions (procedural due process under the Fifth Amendment or jury trial under the Sixth Amendment), is that there does not appear to be any way to nullify the impact of what has occurred without the participation of the new juror. Even were it required that the jury "review" with the new juror their prior deliberations or that the jury upon substitution start deliberations anew, it still seems likely that the continuing jurors would be influenced by the earlier deliberations and that the new juror would be somewhat intimidated by the others by virtue of being a newcomer to the deliberations. As for the possibility of sending in the alternates at the very beginning with instructions to listen but not to participate until substituted, this scheme is likewise attended by practical difficulties and offends "the cardinal principle that the deliberations of the jury shall remain private and secret in every case." United States v. Virginia Erection Corp., 335 F.2d 868 (4th Cir. 1964).

The amendment provides that if a juror is excused after the jury has retired to consider its verdict, it is within the discretion of the court whether to declare a mistrial or to permit deliberations to continue with 11 jurors. If the trial has been brief and not much would be lost by retrial, the court might well conclude that the unusual step of allowing a jury verdict by less than 12 jurors absent stipulation should not be taken. On the other hand, if the trial has been protracted the court is much more likely to opt for continuing with the remaining 11 jurors.

Rule 32. Sentence and Judgment

(a) SENTENCE.

(1) Imposition of Sentence. Sentence shall be imposed without unreasonable delay. Before imposing sentence the court shall

(A) determine that the defendant and his counsel have had the opportunity to read and discuss the presentence investigation report made available pursuant to subdivision (c)(3)(A) or summary thereof made available pursuant to subdivision (c)( )(B);

(B) afford counsel an opportunity to speak on behalf of the defendant; and

(C) ~~shall~~ address the defendant personally and ask him if he wishes to make a statement in his own behalf and to present any information in mitigation of punishment.

The attorney for the government shall have an equivalent opportunity to speak to the court.

* * *

(c) PRESENTENCE INVESTIGATION.

* * *

(3) Disclosure.

(A) At a reasonable time before imposing sentence the court shall ~~upon request~~ permit the defendant, ~~or~~ and his counsel ~~if he is so represented,~~ to read the report of the presentence investigation exclusive of any recommendation as

to sentence, but not to the extent that in the opinion of the court the report contains diagnostic opinions which, if disclosed, might seriously disrupt a program of rehabilitation; ; or sources of information obtained upon a promise of confidentiality; ; or any other information which, if disclosed, might result in harm, physical or otherwise, to the defendant or other persons; . and The court shall afford the defendant or and his counsel an opportunity to comment thereon on the report and, at in the discretion of the court, to introduce testimony or other information relating to any alleged factual inaccuracy contained in the presentence report it.

(B) If the court is of the view that there is information in the presentence report which should not be disclosed under subdivision (c)(3)(A) of this rule, the court in lieu of making the report or part thereof available shall state orally or in writing a summary of the factual information contained therein to be relied on in determining sentence, and shall give the defendant or and his counsel an opportunity to comment thereon. The statement may be made to the parties in camera.

(C) Any material which may be disclosed to the defendant or and his counsel shall also be disclosed to the attorney for the government.

(D) If the comments of the defendant and his counsel or testimony or other information introduced by them allege any factual inaccuracy in the presentence investigation report or the summary of the report or part thereof, the court shall, as to each matter controverted, make (i) a finding as to the allegation, or (ii) a determination that no such finding is necessary because the matter controverted will not be taken into account in sentencing. A written record of such findings and determinations shall be appended to and accompany any copy of the presentence investigation report thereafter made available to the Bureau of Prisons or the Parole Commission.

(D E) Any copies of the presentence investigation report made available to the defendant or and his counsel and the attorney for the government shall be returned to the probation officer immediately following the imposition of sentence or the granting of probation, unless the court, in its discretion, otherwise directs.

(E F) The reports of studies and recommendations contained therein made by the Director of the Bureau of Prisons or the Parole Commission pursuant to 18 U.S.C. §§ 4205(c), 4252, 5010(e), or 5037(c) shall be considered a presentence investigation within the meaning of subdivision (c)(3) of this rule.

(d) PLEA WITHDRAWAL ~~OF PLEA OF GUILTY~~. If a motion ~~to~~ for withdrawal of a plea of guilty or ~~of~~ nolo contendere ~~may be~~ is made ~~only~~ before sentence is imposed, ~~or~~ imposition of sentence is suspended, or disposition is had under 18 U.S.C. § 4205(c), the court may permit withdrawal of the plea upon a showing by the defendant of any fair and just reason. ~~; but to correct manifest injustice the court after sentence may set aside the judgment of conviction and permit the defendant to withdraw his plea.~~ At any later time, a plea may be set aside only on direct appeal or by motion under 28 U.S.C. § 2255.

* * *

ADVISORY COMMITTEE NOTE

Rule 32(a)(1)

Subdivision (a)(1) has been amended so as to impose upon the sentencing court the additional obligation of determining that the defendant and his counsel have had an opportunity to read the presentence investigation report or summary thereof. This change is

consistent with the amendment of subdivision (c)(3), discussed below, providing for disclosure of the report (or, in the circumstances indicated, a summary thereof) to both defendant and his counsel without request. This amendment is also consistent with the findings of a recent empirical study that under present rule 32 meaningful disclosure is often lacking and "that some form of judicial prodding is necessary to achieve full disclosure." Fennell & Hall, Due Process at Sentencing: An Empirical and Legal Analysis of the Disclosure of Presentence Reports in Federal Courts, 93 Harv.L.Rev. 1613, 1651 (1980):

> The defendant's interest in an accurate and reliable presentence report does not cease with the imposition of sentence. Rather, these interests are implicated at later stages in the correctional process by the continued use of the presentence report as a basic source of information in the handling of the defendant. If the defendant is incarcerated, the presentence report accompanies him to the correctional institution and provides background information for the Bureau of Prisons' classification summary, which, in turn, determines the defendant's classification within the facility, his ability to obtain furloughs, and the choice of treatment programs. The presentence report also plays a crucial role during parole determination. Section 4207 of the Parole Commission and Reorganization Act directs the parole hearing examiner to consider, if available, the presentence report as well as other records concerning the prisoner. In addition to its general use as background at the parole hearing, the presentence report serves as the primary source of information for calculating the inmate's parole guideline score.

Though it is thus important that the defendant be aware now of all these potential uses, the Advisory Committee has considered but not adopted a requirement that the trial judge specificially advise the defendant of these matters. The Committee believes that this additional burden should not be placed upon the trial judge, and that the problem is best dealt with by a form attached to the presentence report, to be signed by the defendant, advising of these potential uses of the report. This suggestion has been forwarded to the Probation Committee of the Judicial Conference.

Rule 32(c)(3)(A), (B) & (C)

Three important changes are made in subdivision (c)(3): disclosure of the presentence report is no longer limited to those situations in which a request is made; disclosure is now provided to both defendant and his counsel; and disclosure is now required a reasonable time before sentencing. These changes have been prompted by findings in a recent empirical study that the extent and nature of disclosure of the presentence investigation report in federal courts under current rule 32 is insufficient to ensure accuracy of sentencing information. In 14 districts, disclosure is made only on request, and such requests are received in fewer than 50% of the cases. Forty-two of 92 probation offices do not provide automatic notice to defendant or counsel of the availability of the report; in 18 districts, a majority of the judges do not provide any notice of the availability of the report, and in 20 districts such notice is given only on the day of sentencing. In 28 districts, the report itself is not disclosed until the day of sentencing in a majority of cases. Thirty-one courts generally disclose the report only to counsel and not to the defendant, unless the defendant makes a specific request. Only 13 districts disclose the presentence report to both defendant and counsel prior to the day of sentencing in 90% or more of the cases. Fennell & Hall, supra, at 1640-49.

These findings make it clear that rule 32 in its present form is failing to fulfill its purpose. Unless disclosure is made sufficiently in advance of sentencing to permit the assertion and resolution of claims of inaccuracy prior to the sentencing hearing, the submission of additional information by the defendant when appropriate, and informed comment on the presentence report, the purpose of promoting accuracy by permitting the defendant to contest erroneous information is defeated. Similarly, if the report is not made available to the defendant and his counsel in a timely fashion, and if disclosure is only made on request, their opportunity to review the report may be inadequate. Finally, the failure to disclose the report to the defendant, or to require counsel to review the report with the defendant, significantly reduces the likelihood that false statements will be discovered, as much of the content of the presentence report will ordinarily be outside the knowledge of counsel.

The additional change to subdivision (c)(3)(C) is intended to make it clear that the government's right to disclosure does not depend upon whether the defendant elects to exercise his right to disclosure.

Rule 32(c)(3)(D)

Subdivision (c)(3)(D) is entirely new. It requires the sentencing court, as to each matter controverted, either to make a finding as to the accuracy of the challenged factual proposition or to determine that no reliance will be placed on that proposition at the time of sentencing. This new provision also requires that a record of this action accompany any copy of the report later made available to the Bureau of Prisons or Parole Commission.

As noted above, the Bureau of Prisons and the Parole Commission make substantial use of the presentence investigation report. Under current practice, this can result in reliance upon assertions of fact in the report in the making of critical determinations relating to custody or parole. For example, it is possible that the Bureau or Commission, in the course of reaching a decision on such matters as institution assignment, eligibility for programs, or computation of salient factors, will place great reliance upon factual assertions in the report which are in fact untrue and which remained unchallenged at the time of sentencing because defendant or his counsel deemed the error unimportant in the sentencing context (e.g., where the sentence was expected to conform to an earlier plea agreement, or where the judge said he would disregard certain controverted matter in setting the sentence).

The first sentence of new subdivision (c)(3)(D) is intended to ensure that a record is made as to exactly what resolution occurred as to controverted matter. The second sentence is intended to ensure that this record comes to the attention of the Bureau or Commission when these agencies utilize the presentence investigation report. In current practice, "less than one-fourth of the district courts (twenty of ninety-two) communicate to the correctional agencies the defendant's challenges to information in the presentence report and the resolution of these challenges." Fennell & Hall, supra, at 1680.

New subdivision (c)(3)(D) does not impose an onerous burden. It does not even require the preparation of a transcript. As is now the practice in some courts, these findings and determinations can be simply entered onto a form which is then appended to the report.

Rule 32(c)(3)(E) & (F)

Former subdivisions (c)(3)(D) and (E) have been renumbered as (c)(3)(E) and (F). The only change is in the former, necessitated because disclosure is now to defendant and his counsel.

The issue of access to the presentence report at the institution was discussed by the Advisory Committee, but no action was taken on that matter because it was believed to be beyond the scope of the rule-making power. Rule 32 in its present form does not speak to this issue, and thus the Bureau of Prisons and the Parole Commission are free to make provision for disclosure to inmates and their counsel.

Rule 32(d)

The amendment to Rule 32(d) is intended to clarify (i) the standard applicable to plea withdrawal under this rule, and (ii) the circumstances under which the appropriate avenue of relief is other than a withdrawal motion under this rule. Both of these matters have been the source of considerable confusion under the present rule. In its present form, the rule declares that a motion to withdraw a plea of guilty or nolo contendere may be made only before sentence is imposed, but then states the standard for permitting withdrawal after sentence. In fact, "there is no limitation upon the time within which relief thereunder may, after sentencing, be sought." United States v. Watson, 548 F.2d 1058 (D.C.Cir. 1977). It has been critically stated that "the Rule offers little guidance as to the applicable standard for a pre-sentence withdrawal of plea," United States v. Michaelson, 552 F.2d 472 (2d Cir. 1977), and that as a result "the contours of [the presentence] standard are not easily defined." Bruce v. United States, 379 F.2d 113 (D.C.Cir. 1967).

By replacing the "manifest injustice" standard with a requirement that, in cases to which it applied, the defendant must (unless taking a direct appeal) proceed under 28 U.S.C. § 2255, the amendment avoids language which has been a cause of unnecessary confusion. Under the amendment, a defendant who proceeds too late to come under the more generous "fair and just reason" standard must seek relief under § 2255, meaning the applicable standard is that stated in Hill v. United States, 368 U.S. 424 (1962): "a fundamental defect which inherently results in a complete miscarriage of justice" or "an omission inconsistent with the rudimentary demands of fair procedure."

Some authority is to be found to the effect that the rule 32(d) "manifest injustice" standard is indistinguishable from the § 2255 standard. In United States v. Hamilton, 553 F.2d 63 (10th Cir. 1977), for example, the court, after first concluding defendant was not entitled to relief under the § 2255 "miscarriage of justice" test, then held that "[n]othing is to be gained by the invocation of Rule 32(d)" and its "manifest injustice" standard. Some courts, however, have indicated that the rule 32(d) standard provides a somewhat broader basis for relief than § 2255. United States v. Dabdoub-Diaz, 599 F.2d 96 (5th Cir. 1979); United States v. Watson, 548 F.2d 1058 (D.C.Cir. 1977); Meyer v. United States, 424 F.2d 1181 (8th Cir.1970); United States v. Kent, 397 F.2d 446 (7th Cir. 1968). It is noteworthy, however, that in Dabdoub-Diaz, Meyer and Kent the defendant did not prevail under either § 2255 or Rule 32(d), and that in Watson, though the § 2255 case was remanded for consideration as a 32(d) motion, defendant's complaint (that he was not advised of the special parole term, though the sentence he received did not exceed that he was warned about by the court) was one as to which relief had been denied even upon direct appeal from the conviction. United States v. Peters, No. 77-1700 (4th Cir. Dec. 22, 1978).

Indeed, it may more generally be said that the results in § 2255 and 32(d) guilty plea cases have been for the most part the same. Relief has often been granted or recognized as available via either of these routes for essentially the same reasons: that there exists a complete constitutional bar to conviction on the offense charged, Brooks v. United States, 424 F.2d 425 (5th Cir. 1970) (§ 2255), United States v. Bluso, 519 F.2d 473 (4th Cir. 1975) (Rule 32); that the defendant was incompetent at the time of his plea, United States v. Masthers, 539 F.2d 721 (D.C.Cir. 1976) (§ 2255), Kienlen v. United States 379 F.2d 20 (10th Cir. 1967) (Rule 32); and that the bargain the prosecutor made with defendant was not kept, Walters v. Harris, 460 F.2d 988 (4th Cir. 1972) (§ 2255), United States v. Hawthorne, 502 F.2d 1183 (3rd Cir. 1974) (Rule 32). Perhaps even more significant is the fact that relief has often been denied under like circumstances whichever of the two procedures was used: a mere technical violation of Rule 11, United States v. Timmreck, 441 U.S. 780 (1979) (§ 2255), United States v. Saft, 558 F.2d 1073 (2d Cir. 1977) (Rule 32); the mere fact defendants expected a lower sentence, United States v. White, 572 F.2d 1007 (4th Cir. 1978) (§ 2255), Masciola v. United States, 469 F.2d 1057 (3rd Cir. 1972) (Rule 32); or mere familial coercion, Wojtowicz v. United States, 550 F.2d 786 (2d Cir. 1977) (§ 2255), United States v. Bartoli, 572 F.2d 188 (8th Cir. 1978) (Rule 32).

The one clear instance in which a Rule 32(d) attack might prevail when a § 2255 challenge would not is present in those circuits which have reached the questionable result that post-sentence relief under 32(d) is available not merely upon a showing of a "manifest injustice" but also for any deviation from literal compliance with Rule 11. United States v. Cantor, 469 F.2d 435 (3d Cir. 1972). See Advisory Committee Note to Rule 11(h), noting the unsoundness of that position.

The change in Rule 32(d), therefore, is at best a minor one in terms of how post-sentence motions to withdraw pleas will be decided. It avoids the confusion which now obtains as to whether a § 2255 petition must be assumed to also be a 32(d) motion and, if so, whether this bears significantly upon how the matter should be decided. See, e.g., United States v. Watson, supra. It also avoids the present undesirable situation in which the mere selection of one of two highly similar avenues of relief, rule 32(d) or § 2255, may have significant procedural consequences, such as whether the government can take an appeal from the district court's adverse ruling (possible under § 2255 only). Moreover, because § 2255 and Rule 32(d) are properly characterized as the "two principal procedures for collateral attack of a federal plea conviction," Borman, The Hidden Right to Direct Apeal From a Federal Conviction, 64 Cornell L.Rev. 319, 327 (1979), this amendment is also in keeping with the proposition underlying the Supreme Court's decision in United States v. Timmreck, supra, namely, that "the concern with finality served by the limitation on collateral attack has special force with respect to convictions based on guilty pleas." The amendment is likewise consistent with ALI Code of Pre-Arraignment Procedure § 350.9 (1975) ("Allegations of non-compliance with the procedures provided in Article 350 shall not be a basis for review of a conviction after the appeal period for such conviction has expired, unless such review is required by the Constitution of the United States or of this State or otherwise by the law of this State other than Article 350"); ABA Standards Relating to the Administration of Criminal Justice § 14-2.1 (2d ed. 1978) (using "manifest injustice" standard, but listing six specific illustrations each of which would be basis for relief under § 2255); Unif.R.Crim.P. 444(e) (Approved Draft, 1974) (using "interest of justice" test, but listing five specific illustrations each of which would be basis for relief under § 2255).

The first sentence of the amended rule incorporates the "fair and just" standard which the federal courts, relying upon dictum in Kercheval v. United States, 274 U.S. 220 (1927), have consistently applied to presentence motions. See, e.g., United States v. Strauss,

563 F.2d 127 (4th Cir. 1977); United States v. Brodin, 535 F.2d 1039 (8th Cir. 1976); United States v. Barker, 514 F.2d 208 (D.C.Cir. 1975). Under the rule as amended, it is made clear that the defendant has the burden of showing a "fair and just" reason for withdrawal of the plea. This is consistent with the prevailing view, which is that "the defendant has the burden of satisfying the trial judge that there are valid grounds for withdrawal," see United States v. Michaelson, supra, and cases cited therein. (Illustrative of a reason which would meet this test but would likely fall short of the § 2255 test is where the defendant now wants to pursue a certain defense which he for good reason did not put forward earlier, United States v. Barker, supra.)

Although "the terms 'fair and just' lack any pretense of scientific exactness," United States v. Barker, supra, guidelines have emerged in the appellate cases for applying this standard. Whether the movant has asserted his legal innocence is an important factor to be weighed, United States v. Joslin, 434 F.2d 526 (D.C.Cir. 1970), as is the reason why the defenses were not put forward at the time of original pleading. United States v. Needles, 472 F.2d 652 (2d Cir. 1973). The amount of time which has passed between the plea and the motion must also be taken into account.

> A swift change of heart is itself strong indication that the plea was entered in haste and confusion * * *. By contrast, if the defendant has long delayed his withdrawal motion, and has had the full benefit of competent counsel at all times, the reasons given to support withdrawal must have considerably more force.

United States v. Barker, supra.

If the defendant establishes such a reason, it is then appropriate to consider whether the government would be prejudiced by withdrawal of the plea. Substantial prejudice may be present for a variety of reasons. See United States v. Jerry, 487 F.2d 600 (3d Cir.1973) (physical evidence had been discarded); United States v. Vasquez-Velasco, 471 F.2d 294 (9th Cir. 1973) (death of chief government witness); United States v. Lombardozzi, 436 F.2d 878 (2d Cir. 1971) (other defendants with whom defendant had been joined for trial had already been tried in a lengthy trial); Farnsworth v. Sanford, 115 F.2d 375 (5th Cir. 1940) (prosecution had dismissed 52 witnesses who had come from all over the country and from overseas bases).

There is currently some disparity in the manner in which presentence motions to withdraw a guilty plea are dealt with. Some courts proceed as if any desire to withdraw the plea before sentence is "fair and just" so long as the government fails to establish that it would be prejudiced by the withdrawal. Illustrative is United States v. Savage, 561 F.2d 554 (4th Cir. 1977), where the defendant pleaded guilty pursuant to a plea agreement that the government would recommend a sentence of 5 years. At the sentencing hearing, the trial judge indicated his unwillingness to follow the government's recommendation, so the defendant moved to withdraw his plea. That motion was denied. On appeal, the court held that there had been no violation of Rule 11, in that refusal to accept the government's recommendation does not constitute a rejection of the plea agreement. But the court then proceeded to hold that absent any showing of prejudice by the government, "the defendant should be allowed to withdraw his plea"; only upon such a showing by the government must the court "weigh the defendant's reasons for seeking to withdraw his plea against the prejudice which the government will suffer." The other view is that there is no occasion to inquire into the matter of prejudice unless the defendant first shows a good reason for being allowed to withdraw his plea. As stated in United States v. Saft, 558 F.2d 1073 (2d Cir. 1977): "The Government is not required to show prejudice when a defendant has shown no sufficient grounds for permitting withdrawal of a guilty plea, although such prejudice may be considered by the district court in exercising its discretion." The second sentence of the amended rule, by requiring that the defendant show a "fair and just" reason, adopts the Saft position and rejects that taken in Savage.

The Savage position, as later articulated in United States v. Strauss, supra, is that the "sounder view, supported by both the language of the rule and by the reasons for it, would be to allow withdrawal of the plea prior to sentencing unless the prosecution has been substantially prejudiced by reliance upon the defendant's plea." (Quoting 2 C. Wright, Federal Practice and Procedure § 538, at 474-75 (1969). Although that position may once have been sound, this is no longer the case in light of the recent revisions of Rule 11. Rule 11 now provides for the placing of plea agreements on the record, for full inquiry into the voluntariness of the plea, for detailed advice to the defendant concerning his rights and the consequences of his plea and a determination that the defendant understands these matters, and for a determination of the accuracy of the plea. Given the great care with which pleas are taken under this revised Rule 11, there is no reason to view pleas so taken as merely "tentative," subject to withdrawal before sentence whenever the government cannot establish prejudice.

> Were withdrawal automatic in every case where the defendant decided to alter his tactics and present his theory of the case to the jury, the guilty plea would become a mere gesture, a temporary and meaningless formality reversible at the defendant's whim. In fact, however, a guilty plea is no such trifle, but "a grave and solemn act," which is "accepted only with care and discernment."

United States v. Barker, supra, quoting from Brady v. United States, 397 U.S. 742 (1970).

The facts of the Savage case reflect the wisdom of this position. In Savage, the defendant had entered into a plea agreement whereby he agreed to plead guilty in exchange for the government's promise to recommend a sentence of 5 years, which the defendant knew was not binding on the court. Yet, under the approach taken in Savage, the defendant remains free to renege on his plea bargain, notwithstanding full compliance therewith by the attorney for the government, if it later appears to him from the presentence report or the comments of the trial judge or any other source that the court will not follow the government's recommendation. Having bargained for a recommendation pursuant to Rule 11(e)(1)(B), the defendant should not be entitled, in effect, to unilaterally convert the plea agreement into a Rule 11(e)(1)(C) type of agreement (i.e., one with a guarantee of a specific sentence which, if not given, permits withdrawal of the plea).

The first sentence of subdivision (d) provides that the motion, to be judged under the more liberal "fair and just reason" test, must have been made before sentence is imposed, imposition of sentence is suspended, or disposition is had under 18 U.S.C. § 4205(c). The latter of these has been added to the rule to make it clear that the lesser standard also governs prior to the second stage of sentencing when the judge, pursuant to that statute, has committed the defendant to the custody of the Attorney General for study pending final disposition. Several circuits have left this issue open, e.g., United States v. McCoy, 477 F.2d 550 (5th Cir. 1973); Callaway v. United States, 367 F.2d 140 (10th Cir. 1966); while some have held that a withdrawal motion filed between tentative and final sentencing should be judged against the presentence standard, United States v. Barker, 514 F.2d 208 (D.C. Cir. 1975); United States v. Thomas, 415 F.2d 1216 (9th Cir. 1969).

Inclusion of the § 4205(c) situation under the presentence standard is appropriate. As explained in Barker:

> Two reasons of policy have been advanced to explain the near-presumption which Rule 32(d) erects against post-sentence withdrawal motions. The first is that post-sentence withdrawal subverts the "stability" of "final judgments." * * * The second reason is that the post-sentence withdrawal motion often constitutes a veiled attack on the judge's sentencing decision; to grant such motions in lenient fashion might
>
> > undermine respect for the courts and fritter away the time and painstaking effort devoted to the sentence process.
>
> * * * Concern for the "stability of final judgments" has little application to withdrawal motions filed between tentative and final sentencing under Section 4208(b) [now 4205(c)]. The point at which a defendant's judgment of conviction becomes "final" for purposes of appeal—whether at tentative or at final sentencing—is wholly within the defendant's discretion. * * * Concern for the integrity of the sentencing process is, however, another matter. The major point, in our view, is that tentative sentencing under Section 4208(b) [now 4205(c)] leaves the defendant ignorant of his final sentence. He will therefore be unlikely to use a withdrawal motion as an oblique attack on the judge's sentencing policy. The relative leniency of the "fair and just" standard is consequently not out of place.

Rule 35. Correction or Reduction of Sentence

* * *

(b) REDUCTION OF SENTENCE. The court may reduce a sentence within 120 days after the sentence is imposed or probation is revoked, or within 120 days after receipt by the court of a mandate issued upon affirmance of the judgment or

dismissal of the appeal, or within 120 days after entry of any order or judgment of the Supreme Court denying review of, or having the effect of upholding, a judgment of conviction or probation revocation. ~~The court may also reduce a sentence upon revocation of probation as provided by law.~~ Changing a sentence from a sentence of incarceration to a grant of probation shall constitute a permissible reduction of sentence under this subdivision.

ADVISORY COMMITTEE NOTE

Rule 35(b)

There is currently a split of authority on the question of whether a court may reduce a sentence within 120 days after revocation of probation when the sentence was imposed earlier but execution of the sentence had in the interim been suspended in part or in its entirety. Compare United States v. Colvin, 644 F.2d 703 (8th Cir. 1981) (yes); United States v. Johnson, 634 F.2d 94 (3d Cir. 1980) (yes); with United States v. Rice, 671 F.2d 455 (11th Cir. 1982) (no); United States v. Kahane, 527 F.2d 491 (2d Cir. 1975) (no). The Advisory Committee believes that the rule should be clarified in light of this split, and has concluded that as a policy matter the result reached in Johnson is preferable.

The Supreme Court declared in Korematsu v. United States, 319 U.S. 432, 435 (1943), that "the difference to the probationer between imposition of sentence followed by probation . . . and suspension of the imposition of sentence [followed by probation]" is not a meaningful one. When imposition of sentence is suspended entirely at the time a defendant is placed on probation, that defendant has 120 days after revocation of probation and imposition of sentence to petition for leniency. The amendment to subdivision (b) makes it clear that similar treatment is to be afforded probationers for whom execution, rather than imposition, of sentence was originally suspended.

The change facilitates the underlying objective of rule 35, which is to "give every convicted defendant a second round before the sentencing judge, and [afford] the judge an opportunity to reconsider the sentence in the light of any further information about the defendant or the case which may have been presented to him in the interim." United States v. Ellenbogan, 390 F.2d 537, 543 (2d Cir. 1968). It is only technically correct that a reduction may be sought when a suspended sentence is imposed. As noted in Johnson, supra, at 96:

> It frequently will be unrealistic for a defendant whose sentence has just been suspended to petition the court for the further relief of a reduction of that suspended sentence.
>
> Just as significant, we doubt that sentencing judges would be very receptive to Rule 35 motions proffered at the time the execution of a term of imprisonment is suspended in whole or in part and the defendant given a term of probation. Moreover, the sentencing judge cannot know of events that might occur later and that might bear on what would constitute an appropriate term of imprisonment should the defendant violate his probation. . . . In particular, it is only with the revocation hearing that the judge is in a position to consider whether a sentence originally suspended pending probation should be reduced. The revocation hearing is thus the first point at which an offender can be afforded a realistic opportunity to plead for a light sentence. If the offender is to be provided two chances with the sentencing judge, to be meaningful this second sentence must occur subsequent to the revocation hearing.

Rule 55. Records

The clerk of the district court and each United States magistrate shall keep ~~such~~ records in criminal proceedings in such form as the Director of the Administrative Office of the United States Courts, ~~with the approval of the Judicial Conference of~~

~~the United States,~~ may prescribe. ~~Among the records required to be kept by the~~ The clerk shall be a book known as the ~~"criminal docket" in which, among other things, shall be entered~~ in the records each order or judgment of the court. ~~The entry of an order or judgment shall show~~ and the date ~~the~~ such entry is made.

ADVISORY COMMITTEE NOTE

The Advisory Committee Note to original Rule 55 observes that, in light of the authority which the Director and Judicial Conference have over the activities of clerks, "it seems best not to prescribe the records to be kept by clerks." Because of current experimentation with automated record-keeping, this approach is more appropriate than ever before. The amendment will make it possible for the Director to permit use of more sophisticated record-keeping techniques, including those which may obviate the need for a "criminal docket" book. The reference to the Judicial Conference has been stricken as unnecessary. See 28 U.S.C. § 604.

[Rule 58. Forms.] (Abrogated)

~~The forms in the Appendix of Forms are illustrative and not mandatory.~~

[APPENDIX OF FORMS]

(Abrogated.)

ADVISORY COMMITTEE NOTE

Rule 58 and the Appendix of Forms are unnecessary and have been abrogated. Forms of indictment and information are made available to United States Attorneys' offices by the Department of Justice. Forms used by the courts are made available by the Director of the Administrative Office of the United States Courts.

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98th Congress, 1st Session - - - - - - - - - House Document No. 98-56

THE UNITED STATES AND CHINA

COMMUNICATION

FROM

THE SPEAKER

TRANSMITTING

A REPORT

TO THE UNITED STATES HOUSE OF REPRESENTATIVES

MAY 2, 1983, and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE

11-011 O WASHINGTON : 1983

98TH CONGRESS, 1ST SESSION

H. Res. 173

Authorizing the printing as a House document of the report of the Speaker entitled "The United States and China".

IN THE HOUSE OF REPRESENTATIVES

April 27, 1983

Mr. GAYDOS submitted the following resolution; which was considered and agreed to.

RESOLUTION

Resolved, That the report of the Speaker entitled "The United States and China" shall be printed as a House document.

SEC. 2. In addition to the usual number, there shall be printed one thousand copies of such document for the use of the House.

INTRODUCTION

In February of this year I accepted an invitation of the National People's Congress of the People's Republic of China to visit their country. I consulted Secretary of State George Shultz regarding the invitation and he strongly encouraged me to accept it. Consequently, I did just that and proceeded to assemble a very senior delegation. The delegation visited China between March 26th and April 3rd. During that period we met in Beijing with Chairman Deng Xiaoping, Premier Zhao Ziyang, Foreign Minister Wu Xueqian, Deputy Foreign Minister Han Xu, N.P.C. Vice Chairman Peng Zhen and N.P.C. Vice Chairman Liano Chengzhi. We also visited the ancient capital city of Xian, the industrial and port city of Shanghai and the scenic city of Hangzhou.

Our discussions with Chinese leaders were candid and to the point. Our Chinese hosts were very hospitable and most cooperative. We deeply appreciated the attention they gave this visit and we consider the efforts they made on our behalf a genuine gesture of goodwill.

On behalf of the delegation I especially want to thank our able and experienced Ambassador Arthur W. Hummel, Jr., Deputy Chief of Mission Charles W. Freeman, Jr., Political Officer Richard Hart and Consul General Donald Anderson for their expert advice and invaluable assistance.

In addition, I wish to thank my good friend and former congressional colleague Ambassador Mike Mansfield for receiving and briefing the delegation during our brief stop over in Tokyo.

Also and again on behalf of the delegation I acknowledge our deep appreciation for the assistance given us by our Mission Chief in Singapore Morton S. Smith and in Hong Kong by Consul General Burt Levin.

This report was reviewed by the Ranking Minority Member of the delegation, Silvio Conte. The views expressed herein are my own and do not necessarily represent those of any individual Member or the delegation as a whole.

Finally, I would also like to note at this point the fact that Representative Silvio Conte made a special plea for the release, from jail in China, of Bishop Gong Pinmei and Father Vincent Chu. Mr. Conte's plea was supported by the entire delegation.

Members and staff accompanying the Speaker on the congressional delegation to China were:

Representative Dan Rostenkowski, Chairman of the Ways and Means Committee (D-IL)

Representative Silvio Conte, Ranking Minority Member of the House Appropriations Committee (R-MA)

Representative Clement Zablocki, Chairman of the House Foreign Affairs Committee (D-WI)

Representative Melvin Price, Chairman of the Armed Services Committee (D-IL)

Representative Edward Boland, Chairman of the Select Committee on House Intelligence and Chairman of Housing and Independent Agencies (D-MA)

Representative Delbert Latta, Ranking Minority Member of the House Budget Committee (R-OH)
Representative Joseph G. Minish, House Committee on Banking, Finance and Urban Affairs (D-NJ)
Representative Charles Rangel, Chairman of the House Select Committee on Narcotics Abuse and Control and Member of the House Ways and Means Committee (D-NY)
Representative Bill Young, House Committee on Appropriations (R-FL)
Representative Joseph Moakley, House Committee on Rules (D-MA)
Representative John Murtha, House Committee on Appropriations (D-PA)
Representative Ralph Regula, House Committee on Appropriations (R-OH)
Representative Tony Coelho, House Committee on Agriculture (D-CA)
Representative Harold Rogers, House Committee on Appropriations (R-KY)
Kirk O'Donnell, General Counsel to the Speaker
James Healey, Special Assistant to the Chairman, House Committee on Ways and Means
Dr. Freeman Cary, Capitol Physician
Dessa Vrtikapa, staff, Office of the Speaker
Charles Wollerton, staff, House Committee on Appropriations
Powell Moore, Assistant Secretary of State for Congressional Relations, Department of State
Russell Rourke, Assistant Secretary of Defense for Congressional Relations, Department of Defense
Mr. Will Itoh, Congressional Affairs, State Department

We began our visit at a time when a number of issues were straining Sino-U.S. relations. Ironically, most of these problems were the result of the rapidly expanding contact between our two nations that has followed normalization of relations. For example, trade between the United States and China has grown significantly over the past several years. During fiscal year 1982 China was our fifth largest market for agricultural goods and our fourteenth largest trading partner. Overall bilateral trade figures surpassed five billion dollars in 1982.

The balance of merchandise trade favors the United States. Between 1978 and 1982 the U.S. trade surplus was approximately seven billion dollars. However, the growth of China's share of the U.S. textile import market from 6.3% in 1980 to 11% in 1982, and our inability to arrive at a mutually acceptable agreement to govern China's textile exports to us led to the unilateral imposition of controls on Chinese textile imports on January 18, 1983. China responded immediately by stopping purchases from the United States of soybeans, cotton, chemical fibers and assorted agricultural goods. In this instance closer ties and burgeoning trade between the two countries have led to a contentious issue that to date has defied resolution.

Another contentious issue is that of technology transfers. China is classified in parallel with the Soviet Union and Eastern Europe as a destination where dual use export controls apply. This rankles the Chinese. Both Secretary Haig and Secretary Shultz as a result of their visits to China have tried to improve the situation while still meeting our legitimate security interests. They have succeeded to a degree but not enough to satisfy the Chinese nor for that matter American businessmen in China. The current cumbersome licensing process does not reflect Administration policy nor the intent of Congress. Bureaucratic obstacles need to be eliminated and the transfer process accelerated dramatically. It is an obvious area of opportunity where problems between the U.S. and China can be resolved in a mutully satisfactory manner.

Another area where closer ties have led to thorny problems is cultural and sports exchanges. Encouraging cultural, educational and sports exchanges has been an explicit strategy for promoting better relations between the U.S. and China. Indeed one of the first signs of the ice breaking in Sino-U.S. relations was the historic table tennis matches in 1971. These exchanges have grown to the point where, approximately, one hundred delegations a month from China were visiting the U.S. in 1982 and more than one hundred thousand Americans visited China during the year.

However, last summer during one of those exchanges, the Chinese tennis star Hu Na applied for political asylum in the United States. Her case was pending during our visit to the People's Republic of China. In fact, I received a letter from her parents during my visit. I replied to them before I left by explaining the asylum process and

promising to deliver the letter to Attorney General Smith. But just following our departure the Justice Department announced that it would grant her asylum.

Hu Na was the eighth Chinese citizen granted asylum since the passage of the Refugee Act of 1980. Ninety-four have been denied asylum and one thousand and thirty applications for asylum by ethnic Chinese are pending. (INS China classifications include Taiwan.)

The Chinese response to the Hu Na decision was swift and significant. They suspended all official cultural and international sports exchanges with the United States scheduled for 1983. This development is a serious setback for Sino-U.S. relations. These exchanges are an essential element in the development of closer ties between China and the United States. As in the case of textiles the Chinese response was quick but it was limited to the specific area of bilateral contact where the dispute occurred. Nevertheless, these limited responses have considerable impact and as disagreements proceed unresolved the cumulative impact of these responses may become even more significant.

Although the matters were not formally raised during our visit the issues of China's desire to join the Asian Development Bank and the default judgment in *Jackson* v. *The P.R.C.* No. 79–C–1272–E, (Northern District of Alabama, September 1, 1982) are potentially damaging to bilateral relations. In the Hukuang Railway Bond default case the Department of State is working hard to find a way to reconcile Chinese views of sovereign immunity with the Federal Rules of Civil Procedure.

The most difficult issue in Sino-U.S. relations is Taiwan. For thirty years following the Communist victory in China the United States Government recognized the Nationalist authorities on Taiwan as the legitimate government of China. However, on January 1, 1979 the United States recognized the People's Republic of China as the "sole legal government of China". The United States also acknowledged in the Joint Communique of January 1, 1979 the Chinese position that "there is but one China and Taiwan is part of China". Within this context, the Joint Communique also states that the "people of the United States will maintain cultural, commercial and other unofficial relations with the people of Taiwan". Pursuant to this and soon after the Carter Administration recognized China the Congress passed the Taiwan Relations Act.

By passing the Act, the Congress provided the statutory basis for maintaining unofficial people-to-people ties with Taiwan. In addition, it expressed its interest in the security of the people on Taiwan and provided the vehicle for arms sales to Taiwan. No doubt it is these latter provisions that the officials of the P.R.C. find so offensive. Faced with such a senior congressional delegation, the official who we met with seldom passed up the opportunity to denounce the Act and demand its repeal. They view it as unwarranted interference in their internal affairs and an affront to their sovereignty. They even maintained that the Act itself was a greater problem than arms sales to Taiwan.

Chairman Zablocki explained the legislative history of the Act and the intent of Congress when it passed the Act. I made it clear that there was not sentiment in Congress to change the Act. In addition, I explained that the overwhelming majority of the Members of Con-

gress wanted closer ties to China and that they did not believe the Act should be an obstacle to those ties. My remarks did not seem to make the Act any less of an obstacle in the eyes of the Chinese. On the contrary they took the opportunity to place the Act in the context of modern Chinese history during which Chinese sovereignty was infringed upon in a variety of ways by a variety of nations including the United States.

Last summer the question of arms sales to Taiwan was a sharp thorn in the side of Sino-U.S. relations. There were frequent rumors that the Chinese might recall their Ambassador to the United States. But this did not happen. Instead, on August 17, 1982 the U.S. and China signed a Joint Communique, which provides a framework for managing the issue of U.S. arms sales to China. It contains a Chinese statement of its fundamental policy of striving for a peaceful resolution of the Taiwan question and a parallel U.S. policy statement that U.S. arms sales to Taiwan will not exceed, either in qualitative or quantitative terms, the level of those supplied in recent years since the establishment of diplomatic relations between the U.S. and China. It further states that the U.S. intends to reduce gradually its sales of arms to Taiwan. Needless to say, Chinese officials objected to our estimated projections for FY 1983 arms sales to Taiwan of 800 million dollars. Despite the fact that it represents a one-third increase in the dollar of arms sales over FY 1982, the Administration maintains that this figure, once adjusted for inflation is consistent with the Joint Communique.

Although the Communique does not resolve the issue of U.S. arms sales to Taiwan, it does represent an important effort to deal with this issue. It should be complied with if at all possible.

Taiwan is an unsettled issue in Sino-U.S. relations. It is not likely to be finally resolved in the near future. For the leaders of the P.R.C. it is a highly emotional issue. Nevertheless, it has not been so significant an obstacle that it prevented the establishment of diplomatic relations and the subsequent growth in trade and people-to-people contacts. The United States has categorically rejected a "two China" policy and China has stated as a matter of "fundamental policy" it will seek a peaceful resolution of the Taiwan question. With those two policy anchors, China and the United States need not drift apart over Taiwan.

But the fact is that on this issue more than any other the mutual trust so eagerly sought by both countries is lacking. Although the Taiwan question is likely to remain a challenge to improved Sino-U.S. relations for some time it has not been and is not an absolute bar to improving bilateral relations. Although it is a ubiquitous problem three Communiques have provided a framework for dealing with it that has not existed in the case of new problems like Hu Na, the Hukuang Railway Bonds and textile imports. As a result these past normalization problems have already done or threaten to do more damage to bilateral ties than the Taiwan question. If the Taiwan question were resolved, then the atmosphere for settling problems of all kinds in the Sino-U.S. relationship would improve immeasurably.

The Taiwan question is bound to demand an enormous amount of time and attention from U.S. policymakers. It deserves it. President Reagan has stated that "our relationship with the People's Republic

of China is important not only for peace and stability in Asia but around the world . . .". I agree with that observation and because of it the difficult issue of Taiwan should continue to be monitored very carefully.

In our meeting, Chairman Deng outlined the three major goals for China in the eighties and nineties. The first was "opposing hegemonism and promoting world peace"; the second was successfully implementing the "four modernizations" program; the third was "reunification with Taiwan".

Assuming that our country is not regarded as "hegemonic" by the Chinese, the United States can certainly be helpful in the first two goals. The United States position on the third goal is that it is an internal matter for the P.R.C. and Taiwan to work out. Our sole concern is that any resolution be peaceful.

Common strategic interests are obvious. China and the U.S. agree on the threat of Soviet expansionism. We oppose the Soviet occupation of Afghanistan and Vietnam's occupation of Kampuchia. The Soviet Union is a destablizing force in Asia while China is a stabilizing force in Asia. As the Soviets increase the size and projection of their Pacific Fleet and as they increase their deployment of SS20's in Asia the importance of maintaining friendly relations between China and the United States should not be underestimated.

Premier Zhao informed us that 1982 was a good year for the Chinese economy. Overall growth in G.N.P. was likely to exceed five per cent for the year. Agricultural growth was even higher. After a rocky start China's economic reform and readjustment program seems to be taking hold. After concluding, as stated by Premier Zhao that "equalitarianism does not equal socialism" the Chinese leadership is moving to make its industrial and agricultural sectors more productive by introducing more incentives into the system and by decentralizing their highly centralized planned economy.

The Chinese leadership is quite encouraged about the results so far particularly in the agricultural sector. Following nearly thirty years of emphasizing self sufficiency China is promoting foreign investment and foreign trade. The United States can be a contributor to Chinese economic reform. Currently, the United States is their third largest source of imports.

In China economic readjustment has serious political ramifications. Consequently, these reform plans most recently received the approval of the 12th Party Congress in September of 1982 and in December of 1982 the National People's Congress enacted a new five year plan based on the reform approach. In addition, China's new constitution endorses "socialist modernization".

From our discussions and travel through China it seems that the commitment to modernization and economic reform is deep-seated and broad based. On several occasions Chinese officials reiterated their commitment to the reform process and reassured us that there would be no sudden changes in that process. They were quite frank about the very adverse political and economic consequences of the Cultural Revolution and very emphatic that upheavals of that sort were a thing of the past. By adopting a new constitution and upgrading the role of the National People's Congress it is apparent that the leadership is trying to build a more stable institutional base for the govern-

ment. The economic readjustment is not a simple task because China is so vast, so populous and so far behind industrially and agriculturally. But at the moment the reforms are producing satisfactory results and they seem to have the strong support of the Party and the people.

The United States has both an economic and political interest in helping China realize its economic goals. The economic interest has already been mentioned. China is becoming an important trading partner. Its economic readjustment has triggered an opening to the West in trade and educational exchanges.

Politically, success in economic readjustment and reform will promote political stability in China. This stability is most desirable at a time when the Soviet Union is actively trying to destabilize Central Asia and Southeast Asia.

It was quite apparent to me that China's leaders have learned from the mistakes of the past thirty years and are ready to make the necessary adjustments to modernize their economy. But they will not do it at what they perceive as a sacrifice of their national dignity or independence. This was apparent in how quickly they modified their initial economic reform plans when those plans caused high budget deficits. The Chinese were not about to incur large debts to outsiders in order to modernize. This is in stark contrast to the approach taken by several socialist countries in Eastern Europe.

It is also apparent in their extreme sensitivity to American policy and American attitudes towards Taiwan. It is clear to me that anything said or done by a Member of Congress or a Member of the Executive Branch is noted and assessed by the government of the People's Republic of China. In most cases, I believe that they dwell too much on statements made by American officials about Taiwan or make too much of resolutions filed in Congress that deal with Taiwan.

I left China with the clear impression that despite the fact that there were ten thousand future leaders of China studying in the United States and that trade between our two nations was quite significant, the gulf between our two countries was growing wider rather than narrower.

Differences of opinion and plain misunderstandings were becoming differences of principles. Small problems were becoming grouped with big problems. A genuine commitment on both sides to resolve these differences was lacking.

The major lesson of the past decade of established relations between the United States and China is that the relationship has been mutually beneficial, particularly in regard to trade, economic development and strategic concerns. It is a relationship between two great powers with very different economic and political systems.

The initial euphoria following the establishment of the relations has worn off. In some instances unrealistic expectations have taken their toll on relations, in others results have exceeded expectations.

The United States is a new nation, a nation of immigrants, united not by a common culture but rather by a common political ideal, democracy.

China on the other hand is the oldest extant civilization in the world. Its culture and its history give it its national identity, its recent revolution gives it its political identity.

The political, religious and cultural differences between the two countries are great. Yet over the past decade considerable progress has been made in improving bilateral relations.

But today the relationship is very uncertain. In response to the cancellation of cultural exchanges, a series of newspaper articles have appeared which discount the Chinese action as limited in nature and point instead to the fact that the Chinese need U.S. technology, grain and strategic presence to achieve their ambitious national goals. I do not dispute the fact that they value these ties to the United States. But I also believe that we must be concerned about the significance of the Chinese response to the Hu Na decision and what the consequences will be of a continued deterioration in Sino-U.S. relations.

Lately, the United States has been a preferred source of technology and agricultural products for China but it is not the only source. If we are not careful we may force the Chinese to look elsewhere for alternative sources for these needs.

My travels through the countryside of Shaanxi Province and Zhejiang Province made me acutely aware of how labor intensive and how technologically backward China's agricultural sector is. In addition, I could readily see why upgrading transportation arteries are a major element of the modernization program. China has an enormous task ahead of it. It is a task that includes a role for the United States. We have begun to play that role already. Whether we continue to play it is now in doubt.

Preserving that role and eliminating that doubt must be a top priority of U.S. policymakers in the Executive Branch and the Congress. Our relations with China should not become more strained because of a failure to resolve problems that arise because of closer ties between the two countries. Naturally, as contacts increase so will the number of problems but there is no good reason why they should not be resolvable.

One Chinese leader quoted a proverb to us: "Seek the common ground while having differences". Today differences are preventing China and the United States from reaching the common ground. We must not permit that to continue. Because if it does then John K. Fairbank's observation about Sino-U.S. relations will continue to apply, namely: ". . . China in our experience has usually been only promises unrealized . . .".

Both the Chinese and the United States maintain that we can achieve a better accord by increasing our mutual understanding. I am convinced that my colleagues and I did just that during our visit. I am hopeful that in the not-too-distant future we can say our visit helped reverse the current trend of deteriorating relations between the United States and China.

SINGAPORE

Following our visit to China the delegation visited the Republic of Singapore. The visit occurred during the Vietnamese offensive in Cambodia. Singapore, an ASEAN member, strongly opposes Vietnam's occupation of Kampuchea and vigorously condemned their latest offensive.

In our meeting with Foreign Minister Dhanabalan, he expressed serious concern about the growing presence of the Soviet Union in Southeast Asia.

He noted with favor the continued presence of the United States in the region and felt it was necessary to offset the Soviet buildup.

Prime Minister Lee focused on the state of the world economy and the need for the United States to put it on a firmer foundation by lowering interest rates and leading the world out of the current recession. Because of Singapore's dependence on world trade and commerce the Prime Minister was concerned about the solvency of the international banking system and the willingness of the United States to take the lead in straightening out many of the current intractable economic problems.

The officials we met with in Singapore were concerned that the United States should renew its G.S.P. trade program in such a way that Singapore will continue to be included in it.

Singapore is an impressive example of how effective political leadership and free enterprise can promote economic growth. It is a solid example of why the Pacific and Asia will be the overwhelmingly dominant market for the United States in the twenty-first century.

I am convinced that as long as the area is politically stable the region will flourish economically just as Singapore and Hong Kong have done already. Because of our economic interest in the Pacific we have a genuine reason for preserving political stability through the presence of our Pacific Command Defense Forces. As long as the Soviet Union and its surrogate Vietnam are not permitted to further destabilize the region I am convinced Asia will continue its economic take-off and as a result the United States will benefit politically, strategically and economically.

[Addendum]

THE SECRETARY OF STATE,
Washington, March 12, 1983.

DEAR MR. SPEAKER: I was pleased to hear that the National People's Congress has invited you to lead a House delegation to China during the Easter recess. I know that the Chinese attach great importance to the possible visit of your delegation particularly as you have not personally had the opportunity to visit the PRC before. From our perspective your visit would serve to continue the high-level dialogue that we maintain with the Chinese leadership.

I strongly encourage you to accept the invitation of the National People's Congress and assure you of the Department's complete support in working out the arrangements for your visit.

Sincerely yours,

GEORGE P. SHULTZ.

THE HONORABLE
THOMAS P. O'NEILL, JR.,
Speaker of the House of Representatives.

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98th Congress, 1st Session - - - - - - - - House Document No. 98-57

GOVERNING INTERNATIONAL FISHERY AGREEMENT WITH THE GERMAN DEMOCRATIC REPUBLIC

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A GOVERNING INTERNATIONAL FISHERY AGREEMENT BETWEEN THE UNITED STATES AND THE GERMAN DEMOCRATIC REPUBLIC, PURSUANT TO THE MAGNUSON FISHERIES CONSERVATION AND MANAGEMENT ACT OF 1976 (PUBLIC LAW 94-265; 16 U.S.C. 1801)

MAY 3, 1983.—Message and accompanying papers referred to the Committee on Merchant Marine and Fisheries and ordered to be printed

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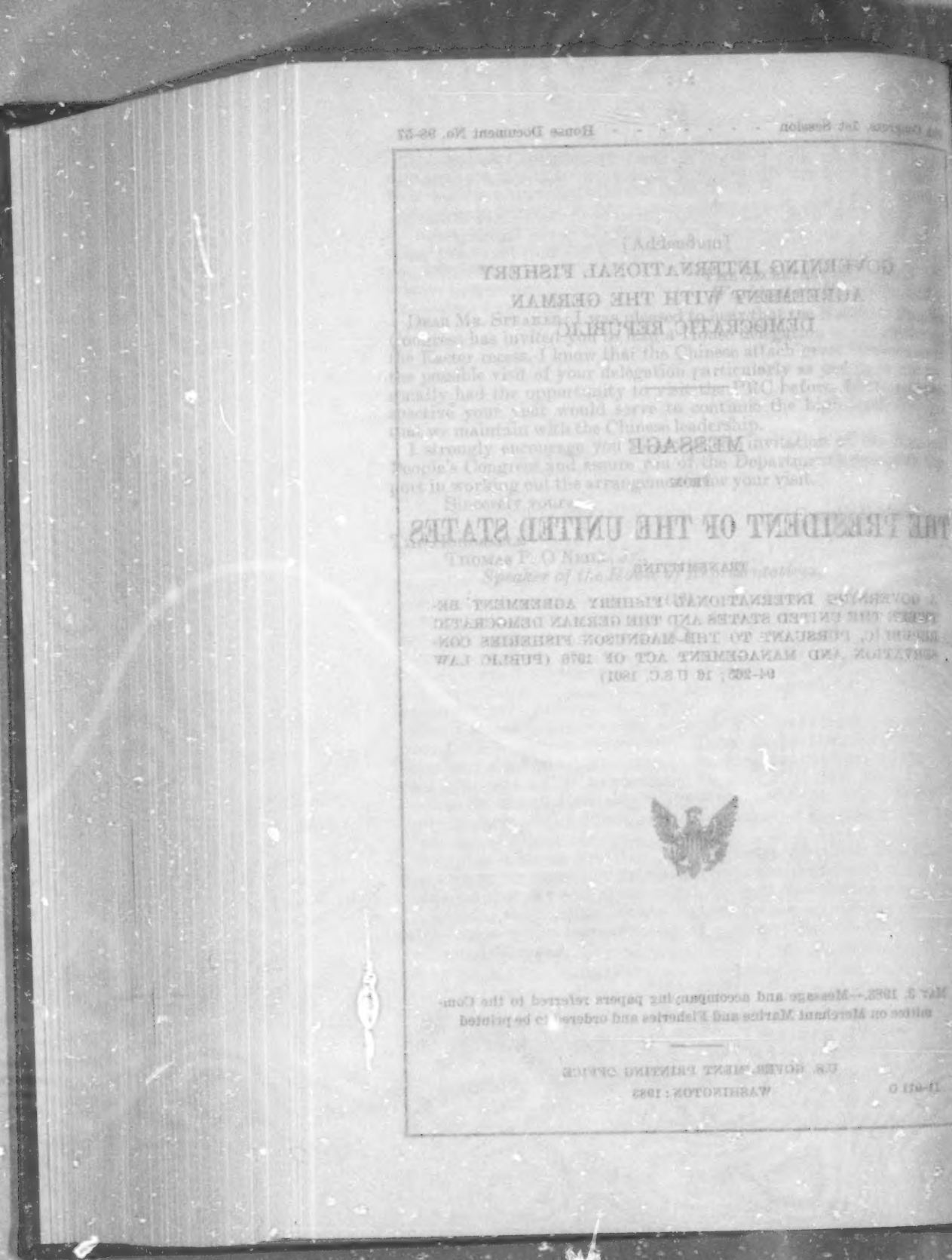
U.S. GOVERNMENT PRINTING OFFICE
11-011 O WASHINGTON: 1983



To the Congress of the United States:

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94–265; 16 USC 1801), I transmit herewith a governing international fishery agreement between the United States and the German Democratic Republic signed at Washington on April 13, 1983.

This agreement is one of a series to be renegotiated in accordance with that legislation to replace existing bilateral fishery agreements. I urge that the Congress give favorable consideration to this agreement at an early date.

RONALD REAGAN.

THE WHITE HOUSE, *May 2, 1983.*

Agreement Between the Government of the United States of America and the Government of the German Democratic Republic Concerning Fisheries off the Coasts of the United States

The Government of the United States of America and the Government of the German Democratic Republic

Considering their common concern for the rational management, conservation and achievement of optimum yield of fish stocks off the coasts of the United States;

Considering the past experience of fishing by vessels of the Government of the German Democratic Republic in waters off the coasts of the United States, the cooperation between the two Parties under the Agreement between the Government of the United States of America and the Government of the German Democratic Republic Concerning Fisheries Off the Coasts of the United States, signed October 5, 1976 and in anticipation of continued and improved cooperation in the field of fisheries;

Recognizing that the United States has established by Presidential Proclamation of March 10, 1983 an exclusive economic zone within 200 nautical miles of its coasts within which the United States has sovereign rights to explore, exploit, conserve and manage all fish and that the United States also has such rights over the living resources of the continental shelf appertaining to the United States and to anadromous species of fish of United States origin; and

Desirous of establishing reasonable terms and conditions pertaining to fisheries of mutual concern over which the United States has sovereign rights to explore, exploit, conserve and manage;

Have agreed as follows:

ARTICLE I

The purpose of this Agreement is to promote effective conservation, rational management and the achievement of optimum yield in the fisheries of mutual interest off the coasts of the United States and to establish a common understanding of the principles and procedures under which fishing may be conducted by nationals and vessels of the German Democratic Republic for the living resources over which the United States has sovereign rights to explore, exploit, conserve and manage.

ARTICLE II

As used in this Agreement, the term

1. "living resources over which the United States has sovereign rights to explore, exploit, conserve and manage" means all fish within the exclusive economic zone of the United States (except highly migratory species), all anadromous species of fish that spawn in the fresh or estuarine waters of the United States and migrate to ocean waters while present in the United States exclusive economic zone and

in areas beyond national fisheries jurisdictions recognized by the United States and all living resources of the continental shelf appertaining to the United States;

2. "fish" means all finfish, molluscs, crustaceans, and other forms of marine animal and plant life, other than marine mammals, birds and highly migratory species;

3. "fishery" means

a. one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

b. any fishing for such stocks;

4. "exclusive economic zone" means a zone contiguous to the territorial sea of the United States, the seaward boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States is measured;

5. "fishing" means

a. the catching, taking or harvesting of fish;

b. the attempted catching, taking or harvesting of fish;

c. any other activity that can reasonably be expected to result in the catching, taking or harvesting of fish; and

d. any operations at sea, including processing, directly in support of, or in preparation for, any activity described in subparagraphs a. through c. above, provided that such term does not include other legitimate uses of the high seas, including any scientific research activity;

6. "fishing vessel" means any vessel, boat, ship, or other craft that is used for, equipped to be used for, or of a type that is normally used for

a. fishing; or

b. aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including preparation, supply, storage, refrigeration, transportation or processing;

7. "highly migratory species" means species of tuna which, in the course of their life cycle, spawn and migrate over great distances in waters of the ocean; and

8. "marine mammal" means any mammal that is morphologically adapted to the marine environment, including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea, or primarily inhabits the marine environment such as polar bears.

ARTICLE III

1. The Government of the United States is willing to allow access for fishing vessels of the German Democratic Republic to harvest, in accordance with terms and conditions to be established in permits issued under Article VII, that portion of the total allowable catch for a specific fishery that will not be harvested by United States fishing vessels and is determined to be available to fishing vessels of the German Democratic Republic in accordance with United States law.

2. The Government of the United States shall determine each year, subject to such adjustments as may be necessitated by unforeseen cir-

umstances affecting the stocks, and in accordance with United States law,

a. the total allowable catch for each fishery based on optimum yield, taking into account the best available scientific evidence, and social, economic and other relevant factors;

b. the harvesting capacity of United States fishing vessels in respect of each fishery;

c. the portion of the total allowable catch for a specific fishery to which access will be provided, on a periodic basis each year, to foreign fishing vessels; and

d. the allocation of such portion that may be made available to qualifying fishing vessels of the Government of the German Democratic Republic.

3. In the implementation of paragraph 2.d. of this Article, the United States shall determine each year the measures necessary to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery in accordance with United States law. Such measures may include, *inter alia:*

a. designations of areas where, and periods when, fishing shall be permitted, limited, or conducted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

b. limitations on the catch of fish based on area, species, size, number, weight, sex, incidental catch, total biomass or other factors;

c. limitations on the number and types of fishing vessels that may engage in fishing and/or on the number of days each vessel of the total fleet may engage in fishing in a designated area for a specified fishery;

d. requirements as to the types of gear that may, or may not, be employed; and

e. requirements designed to facilitate enforcement of such conditions and restrictions, including the maintenance of appropriate position-fixing and identification equipment.

4. The Government of the United States shall notify the Government of the German Democratic Republic of the determinations provided for by this Article on a timely basis.

ARTICLE IV

In determining the portion of the surplus that may be made available to vessels of each country, including the German Democratic Republic, the Government of the United States will decide on the basis of the factors identified in United States law including:

1. whether, and to what extent, such nations impose tariff barriers or nontariff barriers on the importation, or otherwise restrict the market access, of United States fish or fishery products;

2. whether, and to what extent such nations are cooperating with the United States in the advancement of existing and new opportunities for fisheries trade, particularly through the purchase of fish or fishery products from United States processors or from United States fishermen;

3. whether, and to what extent, such nations and the fishing fleets of such nations have cooperated with the United States in the enforcement of United States fishing regulations;

4. whether, and to what extent, such nations require the fish harvested from the exclusive economic zone for their domestic consumption;

5. whether, and to what extent, such nations otherwise contribute to, or foster the growth of, a sound and economic United States fishing industry, including minimizing gear conflicts with fishing operations of United States fishermen, and transferring harvesting or processing technology which will benefit the United States fishing industry;

6. whether, and to what extent, the fishing vessels of such nations have traditionally engaged in fishing in such fishery;

7. whether, and to what extent, such nations are cooperating with the United States in, and making substantial contributions to, fishery research and the identification of fishery resources; and

8. such other matters as the United States deems appropriate.

ARTICLE V

The Government of the German Democratic Republic shall cooperate with and assist the United States in the development of the United States fishing industry and the increase of United States fishery exports by taking such measures as reducing or removing impediments to the importation and sale of United States fishery products, providing information concerning technical and administrative requirements for access of United States fishery products into the German Democratic Republic, providing economic data, sharing expertise, facilitating the transfer of harvesting or processing technology to the United States fishing industry, facilitating appropriate joint venture and other arrangements, informing its industry of trade and joint venture opportunities with the United States, and taking such other actions as may be appropriate.

ARTICLE VI

The Government of the German Democratic Republic shall take all necessary measures to ensure:

1. that nationals and vessels of the German Democratic Republic refrain from fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage except as authorized pursuant to this Agreement;

2. that all such vessels so authorized comply with the provisions of permits issued pursuant to this Agreement and applicable laws of the United States; and

3. that the total allocation referred to in Article III, paragraph 2. d. of this Agreement is not exceeded for any fishery.

ARTICLE VII

The Government of the German Democratic Republic may submit an application to the Government of the United States for a permit for each fishing vessel of the German Democratic Republic that wishes to engage in fishing in the exclusive economic zone pursuant to this

Agreement. Such application shall be prepared and processed in accordance with Annex I, which constitutes an integral part of this Agreement. The Government of the United States may require the payment of fees for such permits and for fishing in the United States exclusive economic zone. The Government of the German Democratic Republic undertakes to keep the number of applications to the minimum required, in order to aid in the efficient administration of the permit program.

ARTICLE VIII

The Government of the German Democratic Republic shall ensure that nationals and vessels of the German Democratic Republic refrain from harassing, hunting, capturing or killing, or attempting to harass, hunt, capture or kill, any marine mammal within the United States exclusive economic zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States.

ARTICLE IX

The Government of the German Democratic Republic shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each vessel of the German Democratic Republic is prominently displayed in the wheelhouse of such vessel;

2. appropriate position-fixing and identification equipment, as determined by the Government of the United States, is installed and maintained in working order on each vessel;

3. designated United States observers are permitted to board, upon request, any such fishing vessel, and shall be accorded the courtesies and accommodations provided to ships' officers while aboard such vessel, and owners, operators and crews of such vessel shall cooperate with observers in the conduct of their official duties, and, further, the Government of the United States shall be reimbursed for the costs incurred in the utilization of observers;

4. agents are appointed and maintained within the United States possessing the authority to receive and respond to any legal process issued in the United States with respect to an owner or operator of a vessel of the German Democratic Republic for any cause arising out of the conduct of fishing activities for the living resources over which the United States has sovereign rights to explore, exploit, conserve and manage; and

5. all necessary measures are taken to minimize fishing gear conflicts and to ensure the prompt and adequate compensation of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear or catch, and resultant economic loss, that is caused by any fishing vessel of the German Democratic Republic as determined by applicable United States procedures.

ARTICLE X

The Government of the German Democratic Republic shall take all appropriate measures to assist the United States in the enforce-

ment of its laws pertaining to fishing in the exclusive economic zone and to ensure that each vessel of the German Democratic Republic that engages in fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage shall allow and assist the boarding and inspection of such vessel by any duly authorized enforcement officer of the United States and shall cooperate in such enforcement action as may be undertaken pursuant to the laws of the United States.

ARTICLE XI

1. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on vessels of the German Democratic Republic or their owners, operators, or crews that violate the requirements of this Agreement or of any permit issued hereunder.

2. Arrested vessels and their crews shall be promptly released, subject to such reasonable bond or other security as may be determined by the court.

3. In any case arising out of fishing activities under this Agreement, the penalty for violation of fishery regulations shall not include imprisonment or any other form of corporal punishment except in the case of enforcement related offenses such as assault on an enforcement officer or refusal to permit boarding and inspection.

4. In cases of seizure and arrest of a vessel of the German Democratic Republic by the authorities of the Government of the United States, notification shall be given promptly through diplomatic channels informing the Government of the German Democratic Republic of the action taken and of any penalties subsequently imposed.

ARTICLE XII

1. The Governments of the United States and the German Democratic Republic shall cooperate in the conduct of scientific research required for the purpose of managing and conserving living resources over which the United States has sovereign rights to explore, exploit, conserve and manage, including the compilation of the best available scientific information for management and conservation of stocks of mutual interest.

2. The competent agencies of the two Governments shall cooperate in the development of periodic research plans on stocks of mutual concern through correspondence or meetings as appropriate, and may modify them from time to time by agreement. The agreed research plans may include, but are not limited to, the exchange of information and scientists, regularly scheduled meetings between scientists to prepare research plans and review progress, and jointly conducted research projects.

3. The conduct of agreed research during regular commercial fishing operations on board a fishing vessel of the German Democratic Republic in the United States exclusive economic zone shall not be deemed to change the character of the vessel's activities from fishing

to scientific research. Therefore, it will still be necessary to obtain a permit for the vessel in accordance with Article VIII.

4. The Government of the German Democratic Republic shall cooperate with the Government of the United States in the implementation of procedures for collecting and reporting biostatistical information and fisheries data, including catch and effort statistics, in accordance with procedures which will be stipulated by the United States.

ARTICLE XIII

The Government of the United States and the Government of the German Democratic Republic shall carry out periodic bilateral consultations regarding the implementation of this Agreement and the development of further cooperation in the field of fisheries of mutual concern, including the establishment of appropriate multilateral organizations for the collection and analysis of scientific data respecting such fisheries.

ARTICLE XIV

The Government of the United States undertakes to authorize fisheries research vessels and fishing vessels of the German Democratic Republic allowed to fish pursuant to this Agreement to enter designated ports in accordance with United States laws and regulations referred to in Annex II, which constitutes an integral part of this Agreement.

ARTICLE XV

Should the Government of the United States indicate to the Government of the German Democratic Republic that nationals and vessels of the United States wish to engage in fishing in the fishery conservation zone of the German Democratic Republic, or its equivalent, the Government of the German Democratic Republic will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with this Agreement.

ARTICLE XVI

Nothing contained in the present Agreement shall prejudice the views of either Government with respect to the existing territorial or other jurisdiction of the coastal State for all purposes other than the conservation and management of fisheries.

ARTICLE XVII

1. This Agreement shall enter into force on a date to be agreed upon by exchange of notes, following the completion of internal procedures of both Governments, and remain in force until July 1, 1988, unless extended by an exchange of notes between the Parties. Notwithstanding the foregoing, either Party may terminate this Agreement by giving written notice of such termination to the other Party twelve months in advance.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force at the request of either Government.

In witness whereof, the undersigned, being duly authorized for this purpose, have signed this Agreement.

Done at Washington, April 13, 1983, in the English and German languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE GERMAN DEMOCRATIC REPUBLIC:

Annex I.—Application and Permit Procedures

The following procedures shall govern the application for and issuance of annual permits authorizing vessels of the German Democratic Republic to engage in fishing for living resources over which the United States has sovereign rights to explore, exploit, conserve and manage:

1. The Government of the German Democratic Republic may submit an application to the competent authorities of the United States for each fishing vessel of the German Democratic Republic that wishes to engage in fishing pursuant to this Agreement. Such application shall be made on forms provided by the Government of the United States for that purpose.

2. Any such application shall specify:

a. the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner and operator thereof;

b. the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other information relating to the fishing characteristics of the vessel as may be requested;

c. a specification of each fishery in which each vessel wishes to fish;

d. the amount of fish or tonnage of catch by species contemplated for each vessel during the time such permit is in force;

e. the ocean area in which, and the season or period during which, such fishing would be conducted; and

f. such other relevant information as may be requested, including desired transshipping areas.

3. The Government of the United States shall review each application, shall determine what conditions and restrictions may be needed, and what fee will be required, and shall inform the Government of the German Democratic Republic of such determinations. The Government of the United States reserves the right not to approve applications.

4. The Government of the German Democratic Republic shall thereupon notify the Government of the United States of its acceptance or rejection of such conditions and restrictions and, in the case of a rejection, of its objections thereto.

5. Upon acceptance of the conditions and restrictions by the Government of the German Democratic Republic and the payment of

any fees, the Government of the United States shall approve the application and issue a permit for each fishing vessel of the German Democratic Republic, which fishing vessel shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the Government of the German Democratic Republic notifies the Government of the United States of its objections to specific conditions and restrictions, the two sides may consult with respect thereto and the Government of the German Democratic Republic may thereupon submit a revised application.

7. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Governments.

ANNEX II.—PROCEDURES RELATING TO UNITED STATES PORT CALLS

Article XIV of the Agreement provides for the entry of certain vessels of the German Democratic Republic into designated ports of the United States in accordance with United States law for certain purposes. Annex II designates the ports and purposes authorized and describes procedures which govern such port entries.

1. The following types of vessels may enter the ports specified following a notice received at least four working days in advance of the entry:

a. Fisheries research vessels, fishing vessels participating in joint ventures involving over-the-side purchases of fish from U.S. fishing vessels, and other fishing vessels (including support vessels) of the German Democratic Republic which have been issued permits pursuant to the Agreement are authorized to enter the ports of Baltimore, Maryland; Philadelphia, Pennsylvania; New York, New York; and Boston, Massachusetts.

b. Fisheries research vessels of the German Democratic Republic are authorized to enter the ports of Buzzards Bay and Woods Hole, Massachusetts.

2. Vessels referred to in paragraph 1 above may enter the ports referred to for a period not exceeding seven calendar days for the purposes of scientific planning and discussion, to exchange scientific data, equipment, and personnel, and to replenish ships' stores or fresh water, obtain bunkers, provide rest for or make changes in the vessels' personnel, obtain repairs, or obtain other services normally provided in such ports, and, as necessary, to receive permits; provided, however, that in exceptional cases involving force majeure vessels may remain in port for longer periods required to effect repairs necessary for seaworthiness and operational reliability without which the voyage could not be continued. All such entries into port shall be in accordance with applicable rules and regulations of the United States and of state and local authorities in the areas wherein they have jurisdiction.

3. The notice referred to in paragraph 1 shall be made by an agent for the vessel to the United States Coast Guard (GWPE) in accordance with standard procedures using telex (892427), teletype communication "TWX" (710–822–1959), or Western Union. With respect to vessels desiring to enter U.S. ports under this Agreement, the United States reserves the right to require such vessels to submit to inspection by authorized personnel of the United States Coast Guard or other appropriate Federal agencies.

best copy available

4. The Government of the United States of America at the consular sections of its diplomatic missions will accept crew lists in application for visas valid for a period of 12 months for multiple entry into the specified United States ports. Such a crew list shall be submitted at least 14 days prior to the first entry of a vessel into a port of the United States. Submission of an amended (supplemental) crew list subsequent to departure of a vessel from a port of the German Democratic Republic will also be subject to the provisions of this paragraph, provided that visas thereunder shall be valid for 12 months from the date of issuance of the original crew list visa. Notification of entry shall specify if shore leave is requested under such multiple entry visa.

5. In cases where a seamen of the German Democratic Republic is evacuated from his vessel to the United States for the purpose of emergency medical treatment, authorities of the German Democratic Republic shall ensure that the seaman departs from the United States within 14 days after his release from the hospital. During the period that the seaman is in the United States, representatives of the German Democratic Republic will be responsible for him.

6. The exchange of crews of vessels of the German Democratic Republic in the specified ports shall be permitted subject to submission to the consular section of U.S. diplomatic missions of applications for individual transit visas and crewman visas for replacement crewmen. Applications shall be submitted 14 days in advance of the date of the arrival of the crewmen in the United States and shall indicate the names, dates and places of birth, the purpose of the visit, the vessel to which assigned, and the modes and dates of arrival of all replacement crewmen. Individual passports or seamen's documents shall accompany each application. Subject to United States laws and regulations, the United States mission will affix transit and crewmen visas to each passport or seaman's document before it is returned. In addition to the requirements above, the name of the vessel and date of its expected arrival, a list of names, dates and places of birth for those crewmen who shall be admitted to the United States under the responsibility of the German Democratic Republic representatives for repatriation to the German Democratic Republic and the dates and manner of their departure from the United States shall be submitted to the Department of State 14 days in advance of arrival.

7. In addition, special provisions shall be made as necessary regarding the entry into other ports of the United States of fisheries research vessels of the German Democratic Republic which are engaged in a mutually agreed research program in accordance with the terms of Article XII of the Agreement. Requests for such entry of fisheries research vessels should be forwarded to the United States Department of State, Washington, D.C. through diplomatic channels.

8. The provisions of Annex II may be amended by agreement through an exchange of notes between the two Governments.

Agreed Minutes

The representatives of the Government of the United States and the Government of the German Democratic Republic have agreed to record the following in connection with the Agreement between the Government of the United States of America and the Government

of the German Democratic Republic Concerning Fisheries Off the Coasts of the United States signed today:

1. With respect to Article II, paragraph 1, the representatives of the Governments of the United States and the German Democratic Republic noted that both Governments recognize the right of coastal states to claim exclusive fishery jurisdiction over maritime areas within a maximum 200 nautical miles from baselines drawn in conformity with international law. Therefore, it is understood that "areas beyond national fisheries jurisdictions recognized by the United States" referred to in that paragraph means areas of the high seas not belonging to any fishing zone claimed by a coastal state in conformity with the right mentioned above.

2. With respect to Article IV, the representative of the Government of the United States affirmed that all criteria specified in that Article shall be considered in determining the portion of the surplus to be made available to the German Democratic Republic.

3. The representative of the Government of the German Democratic Republic emphasized the importance of the fishing industry of the German Democratic Republic to his country's economy, and requested that the Government of the United States give due consideration to the need for continuation of fishing operations by vessels of the German Democratic Republic in the United States exclusive economic zone.

The representative of the Government of the United States emphasized the importance of rapid and full development of the United States fishing industry to the United States economy and pointed to the importance which his Government attached to the German Democratic Republic's cooperation in that regard.

The representative of the Government of the United States indicated that consideration to the need expressed by the representative of the Government of the German Democratic Republic for continuation of fishing operations by vessels of the German Democratic Republic would be given in conformity with all the applicable criteria of Articles III and IV.

4. With respect to Article V, the representative of the Government of the United States stated that the economic data likely to be sought would be economic data related to various aspects of fisheries and trade in fishery products.

5. With respect to Article IX, paragraph 5, the representative of the Government of the United States stated that resultant economic loss generally would include losses of income experienced as the result of fishing gear conflicts, in accordance with Section 10 of the Fishermen's Protective Act of 1967, as amended, (22 USC Sec. 1980).

6. The representative of the Government of the German Democratic Republic requested that the list of ports specified in Annex II, paragraph 1.a, be expanded to include the following ports: Dutch Harbour, Kodiak and Seward, Alaska; Seattle, Washington; San Francisco, California; and Portland and Coos Bay, Oregon. The representative of the Government of the United States agreed to consider the request and expressed his willingness to effect an expansion, if possible, by way of an exchange of notes between the two Governments.

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98th Congress, 1st Session - - - - - - - - House Document No. 98-58

SUPPLEMENTAL APPROPRIATIONS

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROPOSED SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 1983 AND AMENDMENTS TO THE REQUEST FOR APPROPRIATIONS FOR FISCAL YEAR 1984

MAY 3, 1983.—Message and accompanying papers referred to the Committee on Appropriations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON: 1983

11-011 O

52-027 O—84——1 (Pt. 1) BLR

THE WHITE HOUSE,
Washington, May 3, 1983.

THE SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I ask the Congress to consider requests for supplemental appropriations for fiscal year 1983 in the amount of $194,121,000 and amendments to the request for appropriations for fiscal year 1984 in the amount of $1,384,000.

The details of these proposals are set forth in the enclosed letter from the Director of the Office of Management and Budget. I concur with his comments and observations.

Respectfully,

RONALD REAGAN.

Enclosures.

Estimate No. 5
98th Congress, 1st Session

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 3, 1983

The President

The White House

Sir:

I have the honor to submit for your consideration requests for supplemental appropriations for the fiscal year 1983 in the amount of $194,121,000 and amendments to the request for appropriations for fiscal year 1984 in the amount of $1,384,000.

I have carefully reviewed the proposals contained in this document and am satisfied that these requests are necessary at this time. I recommend, therefore, that these proposals be transmitted to the Congress.

Respectfully,

David A. Stockman

David A. Stockman
Director

Enclosures

LEGISLATIVE BRANCH

House of Representatives

1984 Budget Appendix Page	Heading	1983 Supplemental Request Pending	1983 Proposed Amendment	1983 Revised Request
III-24	House Leadership Offices	$167,000	$30,000	$197,000
	(In the appropriation language after the above heading delete "$167,000" and insert in lieu thereof $197,000. The annual rate of compensation for any individual employed under the provisions of H.Res. 890, 89th Congress (enacted into permanent law by Public Law 89-545), shall not exceed the annual rate of basic pay of Level V of the Executive Schedule of Section 5316 of Title 5, United States Code:)			

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
1-A2	House Leadership Offices	$2,915,000	$90,000	$3,005,000

These proposals would increase outlays by $30 thousand in 1983 and $90 thousand in 1984.

LEGISLATIVE BRANCH

ARCHITECT OF THE CAPITOL

WEST CENTRAL FRONT OF THE CAPITOL

For an additional amount for "West Central Front of the Capitol", $73,000,000 to remain available until expended.

This proposal would increase 1983 outlays by $700 thousand.

THE JUDICIARY

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
	Courts of Appeals for the Federal Circuit			
I-82	Salaries and expenses	$5,994,000	$45,000	$6,039,000
	Courts of Appeals, District Courts, and Other Judicial Services			
I-88	Space and facilities	$170,423,00	-$1,761,000	$168,662,000
I-89	Court Security	$16,250,000	$2,950,000	$19,200,000
	(In the appropriation language under the above heading delete "$16,250,000,to be available for transfer" and insert in lieu thereof including building ingress-egress control, inspection of packages, directed security patrols, and other similar activities $19,200,000 to be expended directly or transferred and delete "this element" and insert in lieu thereof elements.)			
	Federal Judicial Center			
I-811	Salaries and expenses	$9,282,000	$60,000	$9,342,000

This proposal would provide funds to reimburse the General Services Administration (GSA) for special guard services deemed necessary to maintain the security of the courts. This service was formerly provided in the courts by GSA as part of the Standard Level User Charge. This proposal would increase 1984 outlays by $1.3 million.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICIAL RESIDENCE OF THE VICE PRESIDENT

Operating Expenses

For an additional amount for "Operating expenses," $141,000.

This supplemental request would provide additional funds to fully finance the exterior renovation of the Vice President's residence. This would alleviate the moisture intrusion problem which is causing deterioration of the interior walls of the residence. The supplemental would increase 1983 outlays by $.1 million.

FUNDS APPROPRIATED TO THE PRESIDENT
INTERNATIONAL SECURITY ASSISTANCE

ECONOMIC SUPPORT FUND

In addition to the amounts made available under this heading in the Joint Resolution making continuing appropriations for fiscal year 1983, not to exceed $100,000,000 of amounts having been obligated against appropriations heretofore made under the authority of the Foreign Assistance Act of 1961, as amended, for the purpose of projects or programs in Egypt are, if deobligated in fiscal year 1983, continued available for the same purpose until expended: Provided, that the Committees on Appropriations of the House of Representatives and the Senate are notified prior to the obligation of such amounts under this authority.

The proposed amendment would reappropriate amounts deobligated from prior year appropriations for foreign assistance projects and activities in Egypt. Since the prior year appropriations have expired, such deobligated amounts would no longer be available without the requested language. This proposal would not affect 1983 outlays and would increase 1984 outlays by $20 million.

ENERGY ACTIVITIES
ATOMIC ENERGY DEFENSE ACTIVITIES

For an additional amount for "Atomic Energy Defense Activities" for Project 83-D-200, $16,300,000 to remain available until expended.

This proposal would provide 1983 construction funding for expansion of a plant involved in the production of nuclear weapons. This proposal would increase outlays by $4.8 million in 1983.

DEPARTMENT OF HEALTH AND HUMAN SERVICES
HEALTH RESOURCES AND SERVICES ADMINISTRATION

Health Maintenance Organization
Loan and Loan Guarantee Fund

For an additional amount for "Health Maintenance Organization Loan and Loan Guarantee Fund," $2,650,000, to be used solely for obligations resulting from defaulted loans guaranteed by this fund.

This supplemental appropriation would provide funds to repurchase defaulted notes on loans made to Health Maintenance Organizations and previously sold and guaranteed to the Federal Financing Bank. This proposal would increase 1983 outlays by $2.7 million.

Federal Home Loan Bank Board

Limitation on Administrative and and Nonadministrative Expenses

In the appropriation language under the above heading for the fiscal year 1983 delete "in an amount not to exceed $40,680,000" and delete" in an amount not to exceed $24,340,000".

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-V33	Limitation on administrative and nonadministrative expenses	---	language	---
	(In the appropriation language under the above heading delete "in an amount not to exceed $40,570,000" and "in an amount not to exceed $25,820,000".)			

These language changes would allow the Board additional flexibility to manage staff resources by combining the Board's administrative and non-administrative limitations. This proposal would not affect outlays.

○

98th Congress, 1st Session - - - - - - - House Document No. 98-59

GOVERNING INTERNATIONAL FISHERIES AGREEMENT WITH THE SOVIET UNION

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A GOVERNING INTERNATIONAL FISHERIES AGREEMENT BETWEEN THE UNITED STATES AND THE UNION OF SOVIET SOCIALIST REPUBLICS, PURSUANT TO THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 (PUBLIC LAW 94-265; 16 U.S.C. 1801)

MAY 3, 1983.—Message and accompanying papers referred to the Committee on Merchant Marine and Fisheries and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
11-011 O WASHINGTON: 1983

52-027 O—84——1 (Pt. 2) BLR

To the Congress of the United States:

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94–265; 16 USC 1801), I transmit herewith an exchange of Diplomatic Notes, together with the present agreement, extending the governing international fishery agreement between the United States and the Soviet Union, signed at Washington on November 26, 1976, until July 1, 1984. The exchange of notes together with the present agreement constitute a governing international fishery agreement within the requirements of Section 201(c) of the Act.

Several U.S. fishing interests have urged prompt consideration of this agreement. In view of the July 1 expiration date of the current agreement, I therefore urge that the Congress give favorable consideration to this extension at an early date.

RONALD REAGAN.

THE WHITE HOUSE, *May 3, 1983.*

DEPARTMENT OF STATE,
Washington, April 8, 1983.

The Department of State wishes to draw to the attention of the Embassy of the Union of Soviet Socialist Republics the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republic Concerning Fisheries Off the Coasts of the United States, signed November 26, 1976, and due to expire on July 1, 1983.

The Government of the United States proposes that this Agreement be extended until July 1, 1984.

If the Government of the Union of Soviet Socialist Republics agrees to such an extension, it is proposed that this note and the Embassy's reply thereto shall constitute an agreement between the two Governments, which shall enter into force following written notification of the completion of internal procedures of both Governments.

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,
Washington, D.C., April 20, 1983.

(Translation)

LS NO. #109316 AO Russian.

Embossed seal of the Embassy of the
Union of Soviet Socialist Republics.

No. 17

To the DEPARTMENT OF STATE
of the United States of America, Washington, D.C.

The Embassy of the Union of Soviet Socialist Republics refers to the note of April 8, 1983, from the Department of State and is authorized to announce the agreement of the U.S.S.R. Government with the proposal of the American side to extend until July 1, 1984, the Agreement Between the Government of the Union of Soviet Socialist Republics and the Government of the United States of America Concerning Fisheries Off the Coasts of the United States that was signed November 26, 1976, and is due to expire July 1, 1983.

The U.S.S.R. Embassy confirms that the afore-mentioned note of the U.S. Department of State and this reply thereto constitute an agreement between the two Governments on this subject.

Initialed A. Dob.

DEPARTMENT OF STATE,
Washington, April 22, 1982.

The Department of State wishes to draw to the attention of the Embassy of the Union of Soviet Socialist Republics the Agreement

Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States, signed November 26, 1976, and due to expire July 1, 1982, as amended.

The Government of the United States proposes that this Agreement be extended until July 1, 1983.

If the Government of the Union of Soviet Socialist Republics agrees to such an extension, it is proposed that this note and the Embassy's reply thereto shall constitute an agreement between the two Governments; which shall enter into force following written notification of the completion of internal procedures of both Governments.

I certify that this note is a true copy of the signed original.

RAYMOND V. ARNAUDO.

DEPARTMENT OF STATE,
Washington, April 22, 1983.

The Department of State wishes to draw to the attention of the Embassy of the Union of Soviet Socialist Republics the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States, signed November 26, 1976.

The Government of the United States proposes to delete the ports of Honolulu, Hawaii, and Seattle, Washington, from paragraph 1 of Annex III of the Agreement. This note and the Embassy's acceptance of these selections shall constitute an amendment to Annex III of the Agreement as of the date of the Embassy's acceptance. The Government of the United States is prepared to discuss alternative ports on the Pacific coast which may be substituted for the above two ports.

I certify that this note is a true copy of the signed original.

RAYMOND V. ARNAUDO.

DEPARTMENT OF STATE,
Washington.

The Department of State refers to the Note of April 29 from the Embassy of the Union of Soviet Socialist Republics concerning the amendment to Annex III of the Agreement Between the Government of the United States and the Government of the Union of Soviet Socialist Republics Concerning Fisheries Off the Coasts of the United States.

The Government of the United States accepts the proposal of the Embassy of the Union of Soviet Socialist Republics to substitute the ports of Dutch Harbor, Alaska, and Astoria, Oregon, for the ports of Honolulu, Hawaii, and Seattle, Washington, in paragraph 1 of Annex III of the Agreement. Your Note of April 29 and the Department of State's Note of April 22 and this Note shall constitute an agreement amending Annex III.

I certify that this note is a true copy of the signed original.

RAYMOND V. ARNAUDO.

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,
Washington, D.C., April 29, 1982.

(Translation)

LS No. 106158 AO Russian.

No. 18

To the DEPARTMENT OF STATE,
of the United States of America, Washington, D.C.

The Embassy of the Union of Soviet Socialist Republics refers to the note of April 22, 1982, from the Department of State and is authorized to announce the agreement of the U.S.S.R. Government with the proposal of the American side to extend until July 1, 1983, the Agreement Between the Government of the Union of Soviet Socialist Republics and the Government of the United States of America Concerning Fisheries Off the Coasts of the United States that was signed November 26, 1976, and is due to expire July 1, 1982, as amended to include two ports of call.

The U.S.S.R. Embassy confirms that the afore-mentioned note of the U.S. Department of State and this reply thereto constitute an agreement between the two Governments on this subject.

DEPARTMENT OF STATE,
DIVISION OF LANGUAGE SERVICES,

(Translation)

Washington, D.C., April 29, 1982.
LS No. 106158 AO Russian.

No. 17

To the DEPARTMENT OF STATE,
of the United States of America, Washington, D.C.

The Embassy of the Union of Soviet Socialist Republics refers to the note of April 22, 1982, from the Department of State and advises that the U.S.S.R. Government does not object to substitute other ports for the ports of Honolulu (Hawaii) and Seattle (Washington) mentioned in paragraph 1 of Annex III to the Agreement Between the Government of the Union of Soviet Socialist Republics and the Government of the United States of America Concerning Fisheries Off the Coasts of the United States, signed November 26, 1976 and due to expire July 1, 1982.

Specifically, the Government of the Union of Soviet Socialist Republics is prepared to discuss as alternative harbors the ports of Dutch Harbor (Alaska) and Astoria (Oregon).

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics,

Considering their common concern for the rational management, conservation and optimum utilization of fish stocks off the coasts of the United States;

Acknowledging the fishery management authority of the United States of America as set forth in the Fishery Conservation and Management Act of 1976;

Having regard for the discussions of the Third United Nations Conference on the Law of the Sea regarding coastal state rights over fisheries off its coasts;

Taking into account the traditional fishing of the fleet of the Soviet Union off the coast of the United States, the level of the Soviet Union cooperation with the United States in fishery research, assessment of fishery resources and enforcement with respect to the conservation and management of fishery resources, as well as existing agreements between the Governments of the United States of America and the Union of Soviet Socialist Republics; and

Desirous of establishing reasonable terms and conditions pertaining to fisheries of mutual concern over which the United States of America exercises fishery management authority;

Have agreed as follows:

ARTICLE I

The purpose of this Agreement is to ensure effective conservation, optimum utilization and rational management of the fisheries of mutual interest off the coasts of the United States of America and to establish a common understanding of the principles and procedures under which fishing may be conducted by nationals and vessels of the Soviet Union for the living resources over which the United States management authority as provided by United States law.

ARTICLE II

As used in this Agreement, the term

1. "living resources over which the United States exercises fishery management authority" means all fish within the fishery conservation zone of the United States except highly migratory species, all anadromous species of fish that spawn in the fresh or estuarine waters of the United States and migrate to ocean waters and all living resources of the continental shelf appertaining to the United States;

2. "fish" means all finfish, molluscs, crustaceans, and other forms of marine animal and plant life, other than marine mammals, birds and highly migratory species;

3. "fishery" means

a. one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

b. any fishing for such stocks;

4. "fishery conservation zone" means a zone contiguous to the territorial sea of the United States of America, the seaward boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States of America is measured;

5. "fishing" means
   a. the catching, taking or harvesting of fish;
   b. the attempted catching, taking or harvesting of fish;
   c. any other activity that can reasonably be expected to result in the catching, taking or harvesting of fish; or
   d. any operations at sea directly in support of, or in preparation for, any activity described in subparagraph a. through c. above, provided that such term does not include other legitimate uses of the high seas, including any scientific research activity conducted by a scientific research vessel;
6. "fishing vessel" means any vessel, boat, ship or other craft that is used for, equipped to be used for, or of a type that is normally used for
   a. fishing; or
   b. aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including preparation, supply, storage, refrigeration, transportation or processing;
7. "highly migratory species" means species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean; and
8. "marine mammals" means any mammal that is morphologically adapted to the marine environment, including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea, or mainly inhabits the marine environment.

ARTICLE III

1. The Government of the United States of America shall determine each year, subject to such adjustments as may be necessitated by unforeseen circumstances affecting the stocks;
   a. the total allowable catch for each fishery on the basis of the best available scientific evidence, taking into account the interdependence of stocks, internationally accepted criteria, and all other relevant factors;
   b. the harvesting capacity of United States fishing vessels in respect of each fishery;
   c. the portion of the total allowable catch for a specific fishery that, on an annual basis, will not be harvested by United States fishing vessels; and
   d. the allocation of such portion that can be made available to fishing vessels of the Soviet Union.
2. The United States shall determine each year the measures necessary to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery.
3. In determining the portion of the surplus that may be made available to vessels of the Soviet Union, the Government of the United States of America will promote the objective of optimum utilization, taking into account, *inter alia*, traditional fishing of the Soviet Union, contributions by the Soviet Union to fishery research and the identification of stocks, previous cooperation by the Soviet Union in enforcement with respect to conservation and management of fishery resources of mutual concern, and the need to minimize economic dislocation in cases where vessels of the Soviet Union have habitually fished

52-027 O—84——2 (Pt. 2) BLR

for living resources over which the United States now exercises fishery management authority.

4. The Government of the United States of America shall notify the Government of the Union of Soviet Socialist Republics of the determinations provided for by this Article on a timely basis.

ARTICLE IV

The Government of the Union of Soviet Socialist Republics shall take all necessary measures to ensure:

1. that nationals and vessels of the Soviet Union refrain from fishing for living resources over which the United States exercises fishery management authority except as authorized pursuant to this Agreement;

2. that all such vessels so authorized comply with the provisions of permits issued pursuant to this Agreement and applicable laws of the United States; and

3. that the total allocation assigned to the fishing fleet of the Soviet Union referred to in Article III, paragraph 1. d. of this Agreement is not exceeded for any fishery.

ARTICLE V

The competent authorities of the Government of the Union of Soviet Socialist Republics may submit an application to the competent authorities of the Government of the United States of America for a permit for each fishing vessel of the Soviet Union that wishes to engage in fishing in the fishery conservation zone pursuant to this Agreement. Such application shall be prepared and processed in accordance with Annex I to this Agreement, which shall constitute an integral part of this Agreement. The Government of the United States of America may require the payment of reasonable fees for such permits.

ARTICLE VI

The Government of the Union of Soviet Socialist Republics shall ensure that nationals and vessels of the Soviet Union refrain from harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture or kill, any marine mammal within the United States fishery conservation zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States of America.

ARTICLE VII

The Government of the Union of Soviet Socialist Republics shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each fishing vessel of the Soviet Union is prominently displayed in the wheelhouse of such vessel;

2. appropriate position-fixing and identification equipment is installed and maintained in working order on each such vessel;

3. designated United States observers are permitted to board, upon request, any such fishing vessel, and shall be treated as a ship's officer while aboard such vessel, and, further, the Government of the United States of America shall be reimbursed for the costs incurred in the utilization of observers;

4. agents are appointed and maintained within the United States possessing the authority to represent a vessel owner or operator in any legal proceeding arising out of the conduct of fishing activities under this Agreement, in accordance with applicable laws of the United States; and

5. all necessary measures are taken to ensure the prompt and adequate compensation of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear or catch that is caused by any fishing vessel of the Soviet Union as determined by applicable United States procedures.

ARTICLE VIII

1. The Government of the Union of Soviet Socialist Republics shall take such measures as may be necessary to ensure that each fishing vessel of the Soviet Union authorized to fish pursuant to this Agreement, and any other fishing vessel of the Soviet Union that engages in fishing for living resources subject to the fishery management authority of the United States, shall allow and assist the boarding and inspection of such vessel by any duly authorized enforcement official of the United States, and shall cooperate in such enforcement action as may be undertaken pursuant to the laws of the United States.

2. In cases where a fishing vessel of the Soviet Union has violated a provision of this Agreement or a provision of a permit issued pursuant thereto, the Government of the United States of America shall immediately notify the Government of the Union of Soviet Socialist Republics through diplomatic channels of the facts and the action taken.

3. In order to facilitate the prompt and adequate compensation of the citizens of one country for any loss of, or damage to, their fishing vessels, fishing gear or catch which is caused by any fishing vessel of the other country, the two Governments established the American-Soviet Fisheries Claims Boards as set forth in the Agreement between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Relating to the Consideration of Claims Resulting from Damage to Fishing Vessels or Gear and Measures to Prevent Fishing Conflicts signed at Moscow, February 21, 1973.

ARTICLE IX

1. The Government of the United States of America will impose appropriate penalties, in accordance with the laws of the United States, on fishing vessels of the Soviet Union or their owners or operators that violate the requirements of this Agreement or of any permit issued hereunder.

2. In cases of an enforcement action undertaken by authorities of the Government of the United States of America, the economic loss encountered by the vessel and crew because of lost fishing time shall be minimized through prompt release of the vessel and crew upon the posting of reasonable bond or other security.

ARTICLE X

The Government of the Union of Soviet Socialist Republics undertakes to cooperate with the Government of the United States of America in the conduct of scientific research required for the purpose of managing and conserving living resources subject to the fishery management authority of the United States, including the compilation of best available scientific information for the management and conservation of stocks of mutual concern. The competent agencies of the two Governments shall enter into such arrangements as may be necessary to facilitate such cooperation, including the exchange of information and scientists, regularly scheduled meetings between scientists to prepare research plans and review progress, and the implementation and maintenance of a standardized system for the collection and archiving of relevant statistical and biological information in accordance with the procedures set forth in Annex II, which shall constitute an integral part of this Agreement.

ARTICLE XI

The Government of the United States of America and the Government of the Union of Soviet Socialist Republics shall carry out periodic bilateral consultations regarding the implementation of this Agreement and the development of further cooperation in the field of fisheries of mutual concern, including the establishment of appropriate multilateral organizations for the collection and analysis of scientific data respecting such fisheries.

ARTICLE XII

The Government of the United States of America undertakes to authorize fishing vessels of the Soviet Union allowed to fish pursuant to this Agreement to enter designated ports in accordance with United States laws for the purpose of purchasing bait, supplies, or outfits, or effecting repairs, or for such other purposes as may be authorized in accordance with the procedures set forth in Annex III, which shall constitute an integral part of this Agreement.

ARTICLE XIII

Should the Government of the United States of America indicate to the Government of the Union of Soviet Socialist Republics that its nationals and vessels wish to engage in fishing in the fishery conservation zone of the Soviet Union or its equivalent, the Government of the Union of Soviet Socialist Republics will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with this Agreement.

ARTICLE XIV

Nothing contained in the present Agreement shall prejudice the views of either contracting Government with respect to the existing territorial or other jurisdiction of the coastal state for all purposes other than the conservation and management of fisheries.

ARTICLE XV

1. This Agreement shall enter into force on a date to be mutually agreed by exchange of notes, following the completion of the internal procedures of both Parties, and shall remain in force until July 1, 1982, unless terminated sooner by either Party after giving written notification of such termination one year in advance.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force or upon the conclusion of a multilateral treaty resulting from the Third United Nations Conference on the Law of the Sea.

In witness whereof, the undersigned, being duly authorized for this purpose, have signed this Agreement.

Done at Washington, on the twenty-sixth day of November, 1976, in duplicate, in the English and Russian languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE UNION OF SOVIET SOCIALIST REPUBLICS:

ANNEX I.—APPLICATION AND PERMIT PROCEDURES

The following procedures shall govern the application for and issuance of annual permits authorizing vessels of the Soviet Union to engage in fishing for living resources over which the United States exercises fishery management authority:

1. The competent authorities of the Soviet Union may submit an application to the competent authorities of the United States for each fishing vessel of the Soviet Union that wishes to engage in fishing pursuant to this Agreement. Such application shall be made on forms provided by the Government of the United States of America for that purpose.

2. Any such application for vessel permits shall specify

a. the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner;

b. the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear;

c. a specification of each fishery in which each such vessel wishes to fish;

d. the amount of fish or tonnage of catch by species contemplated for each such vessel during the time such permit is in force;

e. the ocean area in which, and the season or period during which, such fishing would be conducted; and

f. such other relevant information as may be requested, including desired transshipping areas.

3. The competent authorities of the United States shall review each application, shall determine what conditions and restrictions related to fishery management and conservation may be needed, and what fee will be required. The competent authorities of the United States shall inform the competent authorities of the Union of Soviet Socialist Republics of such determinations.

4. The competent authorities of the Soviet Union shall thereupon notify the competent authorities of the United States of their acceptance or rejection of such conditions and restrictions and, in the case of a rejection, of their objections thereto.

5. Upon acceptance of the conditions and restrictions by the competent authorities of the Soviet Union and the payment of all fees, the competent authorities of the United States shall approve the application and issue a permit for each fishing vessel of the Soviet Union which shall thereupon be authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the competent authorities of the Soviet Union notify the competent authorities of the United States of their objections to specific conditions and restrictions, the two Parties may consult with respect thereto and the competent authorities of the Soviet Union may thereupon submit a revised application.

7. The provisions of this Annex may be amended by agreement through an exchange of notes between the two Governments.

Annex II.—Methods of Collecting Biostatistical Information and Reporting Data On Catches of Soviet Fishing Vessels Off the Coasts of the United States

Methods of collecting biostatistical information and reporting data on catches of Soviet fishing vessels as described below are needed for monitoring the status of stocks of the exploitable population of commercial species, and for the evaluation of the possible changes in the fishing resources.

This brings about the need to provide for necessary accuracy in the follow-up of these methods of collecting biostatistical information and reporting data on catches of Soviet fishing vessels, and in its timely and systematic submission. It also implies that some form of archiving of the basic data be provided so that retrieval at a later date in a format different from that specified earlier is possible.

In the future, while the data will be accumulated and analyzed, and the methods of stock assessment will constantly be improved, the methods of collecting biostatistical information and reporting data on catches of Soviet fishing vessels will be improved.

The results of application and of further improvement of the methods of collecting biostatistical information shall be discussed at regular meetings of Soviet Union and United States scientists.

All data described below for the Atlantic area shall be reported to the Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts; data for the Pacific area shall be reported to the Director, Northwest Region, National Marine Fisheries Service, Seattle, Washington.

As available, summary information based on the monthly and quarterly biological and statistical catch data submitted by the Soviet Union to the above mentioned fisheries centers will be provided when requested to the respective Soviet research institutions of the Soviet Union (VNIRO, Moscow; AtlantNIRO, Kaliningrad; TINRO, Vladivostok.)

1. CATCH DATA REPORTING REQUIREMENTS FOR ALL FISHERIES

a. Atlantic Coast

Three months after the close of each quarter, catch effort statistics for semi-monthly time periods for 30-minute square areas shall be reported by vessel for previous quarter. These shall be reported using semi-monthly 30-minute square Statlant 21 B Forms or magnetic tape, computer cards or printouts for all species and gear types. These data, which will be recorded by the fishing vessels, are to be available for making selected, specific joint stock assessment studies. The collection of samples, specified in 2. below, shall be annotated in the fishing records to be kept by the fishing vessels.

Both sides understand that during the first year of the Agreement it may be difficult to meet the time requirements for the reporting of statistics, and before December 31, 1977 such reporting might take as long as six months from the end of the quarter.

b. Pacific Coast

(1) Catch Data Reporting Requirements for the Bering Sea and Aleutian Trawl Fishery: The U.S.S.R. shall report by May 30 of the following year annual catch and effort statistics as follows: Effort in hours trawled, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area; Catch in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area, by the following species groupings:

Yellowfin sole.
Rock sole.
Flathead sole.
Arrowtooth flounder.
Greenland turbot.
Other flounders.
Pacific ocean perch.
Pacific cod.
Sablefish (blackcod).
Walleye (Alaska) pollock.
Atka mackerel.
Pacific herring.
Any other species taken in excess of 1,000 mt.
Other fishes.

In addition to the annual statistical report in (1), above, the U.S.S.R. shall report by the end of the following month, provisional fishery information for each month as follows: Effort in vessel-days on the grounds by vessel-class and gear-type; and Catch in metric tons of flounders, rockfishes, cod, pollock, sablefish, Atka mackerel, herring and others, for each of the following statistical areas of the Interna-

tional North Pacific Fisheries Commission (INPFC) within the United States fishery conservation zone: Bering Sea; subareas 1, 2, 3 and 4.

(2) Catch Data Reporting Requirements for Gulf of Alaska Trawl Fisheries: The U.S.S.R. shall report by May 30 of the following year annual catch and effort statistics, as follows: Effort in hours trawled, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area; Catch in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area, by the following species groupings:

Rock sole.
Flathead sole.
Arrowtooth flounder.
Other flounders.
Pacific ocean perch.
Other rockfishes.
Pacific cod.
Sablefish.
Alaska, pollock.
Atka mackerel.
Any other species taken in excess of 1,000 mt.
Other fishes.

In addition to the annual statistical report above the U.S.S.R. shall report by the end of the following month, provisional monthly fishery information as follows: Effort in vessel-days on the grounds by vessels class; and Catch in metric tons of flounders, rockfishes, cod, pollock, sablefish, Atka mackerel, and others, for each of the following statistical areas of the International North Pacific Fisheries Commission (INPFC):

Southeastern.
Yakutat.
Kodiak.
Chirikof.
Shumagin.

(3) Catch Data Reporting Requirements for the Pacific Hake Fisheries: The U.S.S.R. shall report by May 30 of the following year annual catch and effort statistics, as follows: Effort in hours trawled, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area; Catch in metric tons, by vessel class, by gear type, by month, by ½° (lat.) x 1° (long.) statistical area, by the following groupings:

Hake.
Jake mackerel.
Pacific ocean perch.
Other rockfishes.
Sablefish.
Dover sole.
Other flounders.
Anchovies.
Herring.
Any other species taken in excess of 1,000 mt.
Other fishes.

In addition to the annual statistical report above, the U.S.S.R. shall report by the end of the following month, provisional monthly fishery information as follows: Effort in vessel-days on the grounds by vessel class; and Catch in metric tons by hake, jack mackerel, rockfishes, flounders, and others, for each of the following statistical areas of the INPFC:

Conception.
Monterey.
Eureka.
Columbia.
Vancouver (that portion off the United States coast).

The U.S.S.R. shall also provide such data on any Soviet fisheries in the United States fishery conservation zone in the Hawaiian archipelago region of the Pacific Ocean.

Both sides understand that it may be difficult during the first year of the Agreement to meet the time requirement for the reporting of provisional monthly catch and effort statistics and that reporting such data before December 31, 1977 might take as long as 45 days from the end of the month for which it was collected.

2. METHODS OF COLLECTING BIOSTATISTICAL INFORMATION

a. *Atlantic Coast*

(1) Length-age composition samples:

(a) Samples shall be taken separately for each gear type (e.g. bottom trawl, pelagic trawl, purse seine) and water layer (e.g. on the bottom, midwater level) combination every month by 30 minute square area in which fishing is pursued. One sample shall be taken for every 1,000 tons or fraction thereof within the above categories.

(b) Data to be recorded for each sample:

Vessel class.
Method of fishing: e.g., pelagic.
Specific type of trawl and its vertical and horizontal opening.
Mesh sizes.
Tonnage of the species sampled in the trawl haul.
Total weight of the fish sampled.
Time of day of haul.
Date.
Latitude and Longitude of haul.

(c) Sampling procedures:

(i) Species for which the catch is sorted:

(a) From a single net haul take 4 random aliquots of approximately 50 fish each (For species with less than 200 fish in a single trawl haul accumulate samples over trawl hauls until approximately 200 fish are taken.)

(b) Measure fork length for each fish nearest cm except for herring where the measurement will be the total length to the nearest cm below. Where other measurement systems are used, appropriate conversion information must be supplied.

(c) Take a subsample of one fish from each cm interval (or for fish of large size e.g. spiny dogfish, 2 or 3 cm intervals as in ICNAF standards) and remove scales and otoliths as appropriate. The total number of age samples per month should at least meet the standards established by AtlantNIRO and published as a 1973 ICNAF Document. If it becomes obvious to the samplers that the one fish per interval procedures will not meet these goals they shall increase the sampling intensity. However, the taking of these additional samples does not negate the need to take the prescribed one fish per interval from each length sample. Record the sex of mature individuals in order to examine differences in growth rate between sexes and to assure adequate weighting of age length keys between sexes.

(ii) Species for which catch is not sorted:

(a) From a single trawl take 2 random aliquots of approximately 30 kilos each.

(b) Sort to individual species (for "river herring" this means sorting to alewife *Alosa pseudoharengus* and blueback *Alosa aestivalis*).

(c) Measure fork length for each fish to nearest cm, except for herring where the measurement will be the total length to the nearest cm below. Where other measurement systems are used, appropriate conversion information must be supplied.

(d) Take a subsample of one fish from each cm interval (or for fish of large size e.g. spiny dogfish, 2 or 3 cm intervals as in ICNAF standards) and remove scales and otoliths as appropriate. Record the sex of mature individuals in growth rate between sexes and to assure adequate weighting of age length keys between sexes.

(2) Length-weight samples:

Individuals of one sample of each principal species of fish (e.g., expected yearly catch in area of agreement of 500 or more tons), per International Commission for the Northwest Atlantic Fisheries (ICNAF) Division per month, shall be weighed in grams and measured in millimeters separately for males and females. Each sample will contain 10 fish per centimeter interval (or for fish of large size e.g. spiny dogfish, 2 or 3 cm intervals as in ICNAF standards) for the length range of fish and may be accumulated if necessary from small samples taken over several catches and days. With small fish, where weighing at sea of individuals is not accurate, appropriate numbers of fish of the same length class shall be weighed in aggregate. Sex shall be recorded for mature individuals.

b. Pacific Coast

Biological sampling by the U.S.S.R. will not be required during 1977. Future collection of biological data by the U.S.S.R. will be coordinated according to sampling designs jointly developed through consultations between U.S. and U.S.S.R. scientists to assure specific research needs.

3. The provisions of this Annex may be amended by agreement through an exchange of notes between the two Governments.

ANNEX III.—PROCEDURES RELATING TO UNITED STATES PORT CALLS

Article XII of the Agreement provides for the entry of fishing vessels of the Union of Soviet Socialist Republics allowed to fish pursuant to the Agreement into designated ports of the United States in accordance with United States law for certain purposes. This Annex designates the ports and purposes authorized and describes the procedures which govern port entries.

1. Soviet vessels which have been issued permits or have been authorized to receive permits pursuant to the Agreement are authorized, beginning on the date of entry into force of the Agreement, to enter the ports of Boston; New York; Philadelphia; Baltimore; Seattle; Portland, Oregon; and Honolulu; pursuant to the following procedures.

2. Vessels of the Union of Soviet Socialist Republics may enter the ports specified above to replenish ship's stores or fresh water, obtain bunkers, provide rest for or make changes in their crews, to obtain repairs and other services normally provided in these ports, and, as necessary, to receive permits. Authorized vessels enroute to one of the designated ports to receive a permit will be treated as non-fishing vessels, so long as such vessels observe the provisions of this Agreement.

3. Entry shall be permitted subject to notice to the United States Coast Guard, forwarded so as to be received four days in advance of the port entry using (1) Telex, using Telex number 89–2427, or (2) Teletype Communication "TWX", using TWX number 710–822–1959, or (3) Western Union, using the Address "U.S. Coast Guard Headquarters, 6th and D Streets, S.W., Washington, D.C." All such entries are subject to the applicable laws and regulations of the United States, including the Federal Water Pollution Control Act.

4. The Government of the United States of America at its Embassy in Moscow will accept crew lists in application for visas valid for a period of six months for multiple entry into the specified United States ports. Such a crew list shall be submitted at least fourteen days prior to the first entry of a vessel into a port of the United States. Submission of an amended (Supplemental) crew list subsequent to departure of a vessel from a port of the Union of Soviet Socialist Republics will also be subject to the provisions of this paragraph, provided that visas thereunder shall only be valid for six months from the date of issuance of the original crew list visa. Notification of entry shall specify if shore leave is requested under such multiple entry visa.

5. In cases where a seaman of the Union of Soviet Socialist Republics is evacuated from his vessel to the United States for the purpose of emergency medical treatment, authorities of the Union of Soviet Socialist Republics will ensure that the seaman departs from the United States within fourteen days after his release from the hospital. During the period that the seaman is in the United States, representatives of the Union of Soviet Socialist Republics will be responsible for him.

6. The exchange of crews of vessels of the Union of Soviet Socialist Republics in the specified ports shall be permitted subject to submis-

sion to the United States Embassy in Moscow of applications for individual transit visas and crewman visas for replacement crewmen. Applications shall be submitted fourteen days in advance of the date of the arrival of the crewmen in the United States and shall indicate the names, dates and places of birth, the purpose of the visit, the vessel to which assigned, and the modes and dates of arrival of all replacement crewmen. Individual passports or seamen's documents shall accompany each application. Subject to United States laws and regulations, the United States Embassy will affix transit and crewman visas to each passport or seaman's document before it is returned. In addition to the requirements above, the name of the vessel and date of its expected arrival, a list of namess, dates and places of birth for those crewmen who shall be admitted to the United States under the responsibility of Soviet representatives for repatriation to the Union of Soviet Socialist Republics and the dates and manner of their departure from the United States shall be submitted to the Department of State fourteen days in advance of arrival.

7. Special provisions shall be made as necessary regarding the entry of research vessels of the Union of Soviet Socialist Republics which are engaged in a mutually agreed research program in accordance with the terms of Article X of the Agreement. Requests for entries of fishery research vessels should be forwarded to the United States Department of State, Washington, D.C. through diplomatic channels.

8. The provisions of this Annex may be amended by agreement through an exchange of notes between the two Governments.

Agreed Minutes

The representatives of the Government of the United States and the Government of the Union of Soviet Socialist Republics have agreed to record the following in connection with the Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Concerning Fisheries off the Coasts of the United States signed today:

1. The two Governments agreed to take note that the administration of the Agreement during the first year of its operation would be in some respects transitional in nature.

2. With regard to the existing Agreement Between the Government of the United States of America and the Government of the Union of Soviet Socialist Republics Regarding Fisheries in the Northeastern Pacific Ocean off the Coast of the United States of America which entered into force on August 1, 1975, and expires on December 31, 1976, the Government of the United States of America is prepared to continue measures to minimize gear conflicts between fishing vessels of the two countries in accordance with paragraphs 4 and 5 of that Agreement, and facilitate the entry of Soviet fishing, fishery research and fishery support vessels into designated United States ports in accordance with paragraph 13 of that Agreement.

3. The commitment in paragraph 2 above by the Government of the United States shall be assured during the transitional period following December 31, 1976 and prior to the entry into force of the Agreement signed today, upon the understanding that the Government of the Union of Soviet Socialist Republics during the transi-

tional period prior to entry into force of the Agreement signed today intends to abide by the fishing restrictions and conservation measures of the former Agreement.

4. It is understood by the representatives of both Governments that it would be mutually advantageous to continue their coordinated research, conduct their fishing with due regard for the conservation of the stocks of fish, facilities entry into appropriate ports and protect the marine environment in accordance with the former Agreement during the transitional period prior to the entry into force of the Agreement signed today.

5. With respect to Article II, paragraph 6. b. of the Agreement, representatives of the two Governments agreed that vessels used exclusively for medical, sanitary or patrol purposes should not be considered as fishing vessels for purposes of this Agreement.

6. The Soviet representative agreed that his Government would ensure that any vessels which are capable of undertaking fishing activity and do not have on board a U.S. permit which are used for emergency medical or sanitary purposes or for rescue of persons or vessels in distress or in cases of *force majeure* shall notify the U.S. upon their entry into the U.S. fishery conservation zone. The Soviet representative further agreed that all fishing gear on or near the working deck of such vessels shall not be rigged so as to be readily available for use.

DEPARTMENT OF STATE,
Washington, D.C., November 26, 1976.

His Excellency VLADIMIR M. KAMENTSEV,
Chairman of the Delegation of the Union of Soviet Socialist Republics.

EXCELLENCY: In relation to the position-fixing and identification devices specified in Article VII of the Agreement Between the Government of the United States of America and the Union of Soviet Socialist Republics Concerning Fisheries off the Coasts of the United States, signed today, the representative of the United States wishes to provide the following additional information.

The United States Coast Guard, pursuant to the Fishery Conservation and Management Act of 1976, is developing plans which may require the placement of these devices aboard vessels authorized to fish in the areas or for species over which the United States exercises fishery management authority. These devices would enable an enforcement cutter or aircraft to identify and ascertain the position of authorized vessels while they are subject to United States jurisdiction. The device which a foreign vessel would be required to take on board, in addition to its normal suit of navigation equipment, would be expected to cost approximately $3500 and would be compatible with United States enforcement systems, but would not require the vessel's crew to operate or repair.

Because of the complex technical and administrative problems associated with implementing this system, it is not anticipated that any devices will be ready to be placed aboard foreign vessels for several years. The competent authorities of the United States will keep the competent authorities of the Soviet Union advised of developments in the implementation of this enforcement system during the consultations provided by Article XI of the Agreement.

Sincerely,

THOMAS A. CLINGAN, JR.,
Chairman of the Delegation
of the United States of America.

O

98th Congress, 1st Session - - - - - - - House Document No. 98–60

GOVERNING INTERNATIONAL FISHERIES AGREEMENT WITH POLAND

MESSAGE

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

A GOVERNING INTERNATIONAL FISHERIES AGREEMENT BETWEEN THE UNITED STATES AND THE POLISH PEOPLE'S REPUBLIC, PURSUANT TO THE MAGNUSON FISHERY CONSERVATION AND MANAGEMENT ACT OF 1976 (PUBLIC LAW 94–265; 16 U.S.C. 1801)

MAY 3, 1983.—Message and accompanying papers referred to the Committee on Merchant Marine and Fisheries and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE

11-011 O WASHINGTON : 1983

To the Congress of the United States:

In accordance with the Magnuson Fishery Conservation and Management Act of 1976 (Public Law 94–265; 16 U.S.C. 1801), I transmit herewith an exchange of Diplomatic Notes, together with the present agreement, extending the governing international fishery agreement between the United States and Poland, signed at Washington on August 2, 1976 until July 1, 1984. The exchange of notes together with the present agreement constitute a governing international fishery agreement within the requirements of Section 201(c) of the Act.

Several U.S. fishing interests have urged prompt consideration of this agreement. In view of the July 1 expiration date of the current agreement, I therefore urge that the Congress give favorable consideration to this extension at an early date.

RONALD REAGAN.

THE WHITE HOUSE, *May 3, 1983.*

DEPARTMENT OF STATE,
Washington, April 12, 1983.

The Department of State wishes to draw to the attention of the Embassy of Poland the Agreement Between the Government of the United States of America and the Government of Poland Concerning Fisheries Off the Coasts of the United States, signed August 2, 1976, and due to expire on July 1, 1983.

The Government of the United States proposes that this Agreement be extended until July 1, 1984.

If the Government of Poland agrees to such an extension, it is proposed that this note and the Embassy's reply thereto shall constitute an agreement between the two Governments, which shall enter into force following written notification of the completion of internal procedures of both Governments.

No. 21–9–83.

EMBASSY OF THE POLISH PEOPLE'S REPUBLIC,
Washington, D.C., April 21, 1983.

The Embassy of the Polish People's Republic has the honour to acknowledge receipt of the Note of the Department of State dated April 12, 1983, which reads as follows:

"The Department of State wishes to draw to the attention of the Embassy of Poland the Agreement Between the Government of Poland Concerning Fisheries Off the Coast of the United States, signed August 2, 1976, and due to expire on July 1, 1983.

"The Government of the United States proposes that this Agreement be extended until July 1, 1984.

"If the Government of Poland agrees to such an extension, it is proposed that this note and the Embassy's reply thereto shall constitute an agreement between the two Governments, which shall enter into force following written notification of the completion of internal procedures of both Governments."

The Government of the Polish People's Republic agrees that the Agreement Between the Government of Poland and the Government of the United States of America Concerning Fisheries Off the Coast of the United States, signed August 2, 1976, be extended until July 1, 1984.

It also agrees that the above cited note of the Department of State, dated April 12, 1983, and the present Embassy's reply thereto will constitute an agreement between the two Governments, which shall enter into force following written notification of the completion of internal procedures of both Governments.

[SEAL] EMBASSY OF THE POLISH PEOPLE'S REPUBLIC.

DEPARTMENT OF STATE,
Washington, May 20, 1982.

The Department of State wishes to draw to the attention of the Embassy of Poland the Agreement Between the Government of the United States of America and the Government of Poland Concerning Fisheries Off the Coasts of the United States, signed August 2, 1976, and due to expire on July 1, 1982.

The Government of the United States proposes that this Agreement be extended until July 1, 1983.

If the Government of Poland agrees to such an extension, it is proposed that this note and the Embassy's reply thereto shall constitute an agreement between the two Governments, which shall enter into force following written notification of the completion of internal procedures of both Governments.

No. 21-1/14-82.

EMBASSY OF THE POLISH PEOPLE'S REPUBLIC,
Washington, D.C., May 24, 1982.

The Embassy of the Polish People's Republic presents its compliments to the Department of State and has the honor to acknowledge receipt of the Department's Note of May 20, 1982 which reads as follows:

"The Department of State wishes to draw to the attention of the Embassy of Poland the Agreement Between the Government of the United States of America and the Government of Poland Concerning Fisheries Off the Coasts of the United States, signed August 2, 1976, and due to expire on July 1, 1982.

The Government of the United States proposes that this Agreement be extended until July 1, 1983.

"If the Government of Poland agrees to such an extension, it is proposed that this note and the Embassy's reply thereto shall constitute an agreement between the two Governments. which shall enter into force following written notification of the completion of internal procedure of both Governments".

"The Government of the United States proposes that this Agree-Agreement Between the Government of Poland and the Government of the United States of America Concerning Fisheries Off the Coasts of the United States, signed August 2, 1976, be extended until July 1, 1983.

It also agrees that the above cited note of the Department of State, dated May 20, 1982, and the present Embassy's reply thereto will constitute an agreement between the two Governments, which shall enter into force following written notification of the completion of internal procedures of both Governments.

The Embassy of the Polish People's Republic avails itself of this opportunity to renew to the Department of State the assurances of its highest consideration.

AGREEMENT BETWEEN THE GOVERNMENT OF THE UNITED STATES OF AMERICA AND THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC CONCERNING FISHERIES OFF THE COASTS OF THE UNITED STATES

The Government of the United States of America and the Government of the Polish People's Republic

Considering their common concern for the rational management, conservation and optimum utilization of fish stocks off the coasts of the United States;

Acknowledging the fishery management authority of the United States as set forth in the Fishery Conservation and Management Act of 1976;

Having regard for the discussions of the Third United Nations Conference on the Law of the Sea regarding coastal state rights over fisheries off its coasts;

Desirous of establishing reasonable terms and conditions pertaining to fisheries of mutual concern over which the United States exercises fishery management authority; and

Recalling their Agreement Regarding Fisheries in the Northeastern Pacific Ocean off the Coast of the United States, and the principles set forth therein anticipating legal and jurisdictional changes in the regime of fisheries management;

Have agreed as follows:

ARTICLE I

The purpose of this Agreement is to ensure effective conservation, optimum utilization and rational management of the fisheries of mutual interest off the coasts of the United States and to establish a common understanding of the principles and procedures under which fishing may be conducted by Polish nationals and vessels for the living resources over which the United States exercises fishery management authority as provided by United States law.

ARTICLE II

As used in this Agreement, the term

1. "living resources over which the United States exercises fishery management authority" means all fish within the fishery conservation zone of the United States except highly migratory species, all anadromous species of fish that spawn in the fresh or estuarine waters of the United States and migrate to ocean waters, throughout their migratory range, and all living resources of the continental shelf appertaining to the United States;

2. "fish" means all finfish, molluscs, crustaceans, and other forms of marine animal and plant life, other than marine mammals, birds and highly migratory species;

3. "fishery" means

   a. one or more stocks of fish that can be treated as a unit for purposes of conservation and management and that are identified on the basis of geographical, scientific, technical, recreational and economic characteristics; and

   b. any fishing for such stocks;

4. "fishery conservation zone" means a zone contiguous to the territorial sea of the United States, the seaward boundary of which is a line drawn in such a manner that each point on it is 200 nautical miles from the baseline from which the breadth of the territorial sea of the United States is measured;

5. "fishing" means

   a. the catching, taking or harvesting of fish;

   b. the attempted catching, taking or harvesting of fish;

c. any other activity that can reasonably be expected to result in the catching, taking or harvesting of fish; or

d. any operations at sea directly in support of, or in preparation for, any activity described in sub-paragraphs a. through c. above, provided that such term does not include other legitimate uses of the high seas, including any scientific research activity conducted by a scientific research vessel;

6. "fishing vessel" means any vessel, boat, ship or other craft that is used for, equipped to be used for, or of a type that is normally used for

a. fishing; or

b. aiding or assisting one or more vessels at sea in the performance of any activity relating to fishing, including preparation, supply, storage, refrigeration, transportation or processing;

7. "highly migratory species" means species of tuna which in the course of their life cycle, spawn and migrate over great distances in waters of the ocean;

8. "marine mammals" means any mammal that is morphologically adapted to the marine environment, including sea otters and members of the orders Sirenia, Pinnipedia, and Cetacea, or primarily inhabits the marine environment such as polar bears.

ARTICLE III

1. The Government of the United States is willing to allow access for Polish fishing vessels to harvest, in accordance with conditions and restrictions to be established in permits issued under Article VI, an allocation of that portion of the allowable catch for a specific fishery that will not be harvested by United States fishing vessels.

2. The Government of the United States shall determine each year, subject to such adjustments as may be necessitated by unforeseen circumstances affecting the stocks,

a. the total allowable catch for each fishery on the basis of the best available scientific evidence, taking into account the interdependence of stocks, internationally accepted criteria, and all other relevant factors;

b. the harvesting capacity of United States fishing vessels in respect of each fishery;

c. the portion of the total allowable catch for a specific fishery that, on an annual basis, will not be harvested by United States fishing vessels; and

d. the allocation of such portion that can be made available to qualifying Polish fishing vessels.

3. In implementation of paragraph 2.d. of this Article, the United States shall determine each year the measures necessary to prevent overfishing while achieving, on a continuing basis, the optimum yield from each fishery. Such measures may include, *inter alia*:

a. designated areas where, and periods when, fishing shall be permitted, limited, or conducted only by specified types of fishing vessels or with specified types and quantities of fishing gear;

b. limitations on the catch of fish based on area, species, size, number, weight, sex, incidental catch, total biomass or other factors;

c. limitations on the number and types of fishing vessels that may engage in fishing and/or on the number of days each vessel or the total fleet may engage in fishing in a designated area within the fishery conservation zone or for a specified fishery;

d. requirements as to the types of gear that may, or may not, be employed;

e. requirements designed to facilitate enforcement of such conditions and restrictions, including the maintenance of appropriate position-fixing and identification equipment.

4. The Government of the United States shall notify the Government of Poland of the determinations provided for by this Article on a timely basis.

ARTICLE IV

In determining the portion of the surplus that may be made available to Polish vessels, and vessels of other countries, the Government of the United States will promote the objective of optimum utilization, taking into account, *inter alia*, traditional fishing, if any, contributions to fishery research and the identification of stocks, previous cooperation in enforcement, previous cooperation with respect to conservation and management of fishery resources of mutual concern, and the need to minimize economic dislocation in cases where vessels have habitually fished for living resources over which the United States now exercises fishery management authority.

ARTICLE V

The Government of Poland shall take all necessary measures to ensure:

1. that Polish nationals and vessels refrain from fishing for living resources over which the United States exercises fishery management authority except as authorized pursuant to this Agreement;

2. that all such vessels so authorized comply with the provisions of permits issued pursuant to this Agreement and applicable laws of the United States; and

3. that the total allocation referred to in Article III, paragraph 2.d. of this Agreement is not exceeded for any fishery.

ARTICLE VI

The Government of Poland may submit an application to the Government of the United States for a permit for each Polish fishing vessel that wishes to engage in fishing in the fishery conservation zone pursuant to this Agreement. Such application shall be prepared and processed in accordance with Annex I to this Agreement, which shall constitute an integral part hereof. The Government of the United States may require the payment of reasonable fees for such permits.

ARTICLE VII

The Government of Poland shall ensure that Polish nationals and vessels refrain from harassing, hunting, capturing, or killing, or attempting to harass, hunt, capture or kill, any marine mammal within

the United States fishery conservation zone, except as may be otherwise provided by an international agreement respecting marine mammals to which the United States is a party, or in accordance with specific authorization for and controls on incidental taking of marine mammals established by the Government of the United States.

ARTICLE VIII

The Government of Poland shall ensure that in the conduct of the fisheries under this Agreement:

1. the authorizing permit for each Polish vessel is prominently displayed in the wheelhouse of such vessel;

2. appropriate position-fixing and identification equipment, as determined by the Government of the United States, is installed and maintained in working order on each vessel;

3. designated United States observers are permitted to board, upon request, any such fishing vessel, and shall be accorded the equivalent rank of ship's officer while aboard such vessel, and, further, the Government of the United States shall be reimbursed for the costs incurred in the utilization of observers;

4. agents are appointed and maintained within the United States possessing the authority to receive and respond to any legal process issued in the United States with respect to a vessel owner or operator for any cause arising out of the conduct of fishing activities under this Agreement; and

5. all necessary measures are taken to ensure the prompt and adequate compensation of United States citizens for any loss of, or damage to, their fishing vessels, fishing gear or catch that is proximately caused by any Polish fishing vessel.

ARTICLE IX

1. The Government of Poland shall take such measures as may be necessary to ensure that each Polish vessel authorized to fish pursuant to this Agreement, and any other Polish fishing vessel that engages in fishing for living resources subject to the fishery management authority of the United States, shall allow and assist the boarding and inspection of such vessel by any duly authorized enforcement official of the United States, and shall cooperate in such enforcement action as may be undertaken pursuant to the laws of the United States.

2. In cases where a Polish fishing vessel has violated a provision of this Agreement or a provision of a permit issued pursuant thereto, the Government of the United States shall immediately notify the Government of Poland through diplomatic channels of the facts and the action taken.

3. Both Governments agree to the continuation of the U.S.-Polish Fisheries Board created by Annex I of the Agreement Between the Government of the United States of America and the Government of the Polish People's Republic Regarding Fisheries in the Western Region of the Middle Atlantic Ocean, signed in Washington, May 29, 1975, as amended, and as set forth in Annex II of this Agreement. Annex II of this Agreement forms an integral part of this Agreement.

ARTICLE X

1. The Government of the United States will impose appropriate penalties, in accordance with the laws of the United States, on Polish vessels, or their owners or operators, that violate the requirements of this Agreement or of any permit issued hereunder.

2. In cases of arrest of a Polish fishing vessel, the economic loss encountered by the vessel and crew because of lost fishing time shall be minimized through prompt release of the vessel and crew upon the posting of reasonable bond or other security.

ARTICLE XI

The Government of Poland undertakes to cooperate with the Government of the United States in the conduct of scientific research required for the purpose of managing and conserving living resources subject to the fishery management authority of the United States, including the compilation of the best available scientific information required for the management and conservation of stocks of mutual concern. The competent agencies of the two Governments shall enter into such arrangements as may be necessary to facilitate such cooperation, including the exchange of information and scientists, regularly scheduled meetings between scientists to prepare research plans and review progress, and the implementation and maintenance of a standardized system for the collection and archiving of relevant statistical and biological information in accordance with the procedures in Annex III, which constitutes an integral part of this Agreement.

ARTICLE XII

The Government of the United States and the Government of Poland shall carry out periodic bilateral consultations regarding the implementation of this Agreement and the development of further cooperation in the field of fisheries of mutual concern, including the establishment of appropriate multilateral organizations for the collection and analysis of scientific data respecting such fisheries.

ARTICLE XIII

The Government of the United States undertakes to authorize Polish fishing vessels allowed to fish pursuant to this Agreement to enter designated ports in accordance with United States laws for the purpose of purchasing bait, supplies, or outfits, or effecting repairs or for such other purposes as may be authorized.

ARTICLE XIV

Should the Government of the United States indicate to the Government of Poland that United States nationals and vessels wish to engage in fishing in the fishery conservation zone of Poland, or its equivalent, the Government of Poland will allow such fishing on the basis of reciprocity and on terms not more restrictive than those established in accordance with this Agreement.

ARTICLE XV

Nothing contained in the present Agreement shall prejudice the views of either Government with respect to the existing territorial or other jurisdiction of the coastal State for all purposes other than the conservation and management of fisheries.

ARTICLE XVI

1. This Agreement shall enter into force on a date to be mutually agreed by exchange of notes, following the completion of the internal procedures of both Parties, and shall remain in force until July 1, 1982 unless terminated sooner by either Party after giving written notification of such termination one year in advance.

2. This Agreement shall be subject to review by the two Governments two years after its entry into force or upon the conclusion of a multilateral treaty resulting from the Third United Nations Conference on the Law of the Sea.

IN WITNESS WHEREOF, the undersigned, being duly authorized for this purpose, have signed this Agreement.

DONE in Warsaw, August 2, 1976, in duplicate, in the English and Polish languages, both texts being equally authentic.

FOR THE GOVERNMENT OF THE UNITED STATES OF AMERICA:

FOR THE GOVERNMENT OF THE POLISH PEOPLE'S REPUBLIC:

ANNEX I.—APPLICATION AND PERMIT PROCEDURES

The following procedures shall govern the application for and issuance of annual permits authorizing Polish vessels to engage in fishing for living resources over which the United States exercises fishery management authority:

1. The Government of Poland may submit an application to the Government of the United States for each Polish fishing vessel that wishes to engage in fishing pursuant to this Agreement. Such application shall be made on forms provided by the Government of the United States for that purpose.

2. Any such application shall specify

a. the name and official number or other identification of each fishing vessel for which a permit is sought, together with the name and address of the owner and operator thereof;

b. the tonnage, capacity, speed, processing equipment, type and quantity of fishing gear, and such other information relating to the fishing characteristics of the vessel as may be requested;

c. a specification of each fishery in which each vessel wishes to fish;

d. the amount of fish or tonnage of catch by species contemplated for each vessel during the time such permit is in force;

e. the ocean area in which, and the season or period during which, such fishing would be conducted;

f. such other relevant information as may be requested, including desired transshipping areas.

3. The Government of the United States shall review each application, shall determine what conditions and restrictions related to fishery management and conservation may be needed, and what fee will be required. The Government of the United States shall inform the Government of Poland of such determinations.

4. The Government of Poland shall thereupon notify the Government of the United States of its acceptance or rejection of such conditions and restrictions and, in the case of a rejection, of its objections thereto.

5. Upon acceptance of the conditions and restrictions by the Government of Poland and the payment of any fees, the Government of the United States shall approve the application and issue a permit for each Polish fishing vessel, which is thereupon authorized to fish in accordance with this Agreement and the terms and conditions set forth in the permit. Such permits shall be issued for a specific vessel and shall not be transferred.

6. In the event the Government of Poland notifies the Government of the United States of its objections to specific conditions and restrictions, the two Governments may consult with respect thereto and the Government of Poland may thereupon submit a revised application.

7. The procedures in this Annex may be amended by agreement through an exchange of notes between the two Governments.

Annex II.—American-Polish Fisheries Board

Section 1.—Establishment of the Board

1. There is hereby established an American-Polish Fisheries Board (hereinafter called the Board).

2. The Board shall consist of four members, two appointed by the Government of the United States of America and two appointed by the Government of the Polish People's Republic. At least one of the two members appointed by each Government shall have knowledge of the general principles of international law, particularly those relating to fisheries matters. Each Government-appointed member shall serve as an instructed representative of the appointing Government. It is the responsibility of each Government to maintain its full complement of members.

3. Each Government may appoint one non-voting technical adviser to the Board for each matter heard.

4. All decisions of the Board shall be undertaken unanimously by those members present and voting, so long as at least one member appointed by each Government is present.

5. The Board shall normally sit in New York, New York. Insofar as is necessary considering the location of the parties and the availability of evidence, the Board may sit elsewhere.

6. English and Polish shall be the official working languages of the Board. The Governments shall assist the Board in arranging for necessary translations and interpretations.

7. As used in this Annex, the term "national" refers to any vessel or person, natural or juridical, including but not limited to a governmental entity.

SECTION II.—CONCILIATION FUNCTIONS

1. The Board shall consider claims advanced by a national of either State against a national of the other State regarding financial loss resulting from damage to or loss of the national's fishing vessel or fishing gear.

2. No claim may be brought more than six months after the occurrence of the relevant incident, unless the Board decides unanimously to make an exception for a specific incident occurring during the six weeks prior to the entry into force of the Agreement.

SECTION III.—CONCILIATION PROCEDURES

1. The Board shall establish its procedures in accordance with this Annex.

2. A claim, as referred to in Section II above, shall be brought before the Board by a written request. The request shall be in the form of a sworn statement which shall include, *inter alia*, a detailed account of the incident from which the claim arises, the identity of all persons and vessels involved, the remedy sought (damages claimed), and a list of potential witnesses knowledgeable about the incident. All appropriate documentary evidence supporting the claim shall be forwarded with the claim to the Board.

3. Upon receipt of a claim, the Board shall, as soon as practicable commence an inquiry into the incident, and inform both Governments. Each Government shall immediately notify any of its nationals against whom a claim is made. Its nationals may in turn file with the Board a sworn statement responding to the claim. The response may contain a counterclaim insofar as the counterclaim arises from the same incedent upon which the claim is based. A counterclaim shall be in the same form and contain the same information as a claim. The Board may join claims that arise from the same incident, without prejudice to the right of each party to present evidence with or without counsel.

4. The Board may request further information and documents from the parties to the dispute or from appropriate governmental agencies. All statements, reports, or other documents presented to the Board shall be duly sworn and attested as to their authenticity, insofar as reasonably possible. Official Government reports and documents need not be so authenticated.

5. If either the claimant or the respondent requests a hearing, or if the Board deems it desirable to hold a hearing, the Board shall convene a hearing regarding the incident. The claimant and respondent may appear at the hearing, personally or through a representative, with or without counsel, and may present witnesses. The Board may invite as a witness any person, organization, corporation or other entity which has a direct interest in or knowledge of the matter. The claimant and respondent shall be permitted to question all persons testifying at the hearing, provided that no person shall be required to respond to any question.

6. The Governments will facilitate the work of the Board.

SECTION IV.—CONCILIATION REPORT

1. The Board shall prepare a report containing its findings as to:
   a. the facts giving rise to the claim;
   b. the extent of damage or loss;
   c. the degree of respondent's or claimant's responsibility, if any; and
   d. the amount, if any, which should be paid by respondent or claimant as compensation for losses arising from the incident.
2. If the Board does not unanimously adopt the findings, this shall be stated in the report, and the report shall contain separate statements of each Board member's opinion.
3. The Board shall transmit its report to the claimant, to the respondent, and to each of the two Governments no later than sixty days after the completion of the procedures under Section III.
4. Within thirty days after receipt of the Board's report, either the claimant or the respondent may request in writing that the Board reconsider its report. The request shall set forth the reasons for the request and material substantiating the request. The Board may decide to reconsider its report and, if it deems appropriate, receive new evidence or convene a rehearing, or both. Section III procedures will be applicable to the reconsideration.
5. The two Governments undertake to encourage settlement of claims in accordance with the findings of the Board.
6. Within sixty days of receipt of the Board's report each Government shall report to the Board in writing the actions taken by its nationals pursuant to the Board's findings.
7. If one of the parties to a conciliation proceeding refuses to settle in accordance with the findings of the Board, the Board shall encourage the parties to submit their dispute to binding arbitration.
8. The Board's report and the report of each Government shall be published in the form agreed by the Board.

SECTION V.—USE OF THE BOARD

The two Governments shall encourage their nationals to use in the first instance the Board to settle claims resulting from damage to or loss of fishing gear and vessels. The Governments shall give information about the Board to interested persons.

SECTION VI.—APPLICABLE LAW

In all proceedings under this Annex the Board shall apply:
1. international conventions, whether general or particular, establishing rules expressly recognized by the two Governments, including bilateral and multilateral agreements between the two Governments dealing with fisheries and maritime matters generally;
2. international custom, as evidence of a general practice accepted as law;
3. the general principles of law recognized by nations;
4. judicial decisions and the teachings of the most highly qualified publicists of the various nations, as subsidiary means for the determination of rules of law.

SECTION VII.—OTHER REMEDIES

1. Nothing in this Annex shall preempt, prejudice, or in any other way affect judicial proceedings, or in any way prejudice or affect the substantive or procedural rights of any person, whether or not such person appears before or participates in the proceedings of the Board.

2. No claim shall be brought the substance of which has been or is being adjudicated or arbitrated between the parties. The Board may refuse to consider a claim on the grounds that it should be joined to an existing judicial proceeding involving substantially the same issues and in which the law applicable to such judicial proceeding appears to permit such joinder.

3. The Board shall immediately suspend conciliation proceedings regarding a claim in respect to which judicial proceedings are instituted, unless the court before which the proceedings are pending determines, in the exercise of its lawful authority, that the parties may continue to proceed before the Board.

4. The Board shall immediately terminate conciliation proceedings regarding a claim in respect to which there is a binding agreement to arbitrate.

SECTION VIII.—FUNDING

Each Government shall pay all expenses, including compensation, of the members it appoints to the Board and of any technical advisers it appoints. The two Governments will share equally all the administrative and operational costs of the Board. Such costs do not include expenses related to the presentation or production of evidence or the appearance of witnesses.

SECTION IX.—REVIEW

At the request of either Government, representatives of the two Governments shall meet to review the operation of this Annex and to consider proposals for its revision. This Annex may be amended through an exchange of notes between the two Governments.

SECTION X.—TERMINATION

At any time either Government may give written notice to the other Government of its intention to denounce this Annex, in which case the Annex shall terminate sixty days from the date of the notification, provided that the effect of the Annex shall in any event continue until the conclusion of conciliation proceedings and arbitrations instituted prior to its termination, unless otherwise agreed by the two Governments.

ANNEX III—DATA COLLECTION AND REPORTING REQUIREMENTS FOR POLISH VESSELS

The reporting procedure described below is designed to contribute to continuing needs for assessment of the status of stocks. However specific needs may develop from time to time which require a change in standard procedures, or additional data for special studies. Also the pattern of fisheries will change. These aspects require that the procedures for reporting must be flexible enough to accommodat

necessary changes. It also implies that some form of archiving of the basic data be developed so that retrieval at a later date in a different format is possible.

All data described below for the Atlantic area shall be reported to the Director, Northeast Fisheries Center, National Marine Fisheries Service, Woods Hole, Massachusetts; data for the Pacific area shall be reported to the Director, Northwest Region, National Marine Fisheries Service, Seattle, Washington.

1. Statistical Information Requirements for All Fisheries

a. Atlantic Coast

Catch and Effort: Three months after the close of each quarter, catch-effort statistics for biweekly time periods for 30-minute square areas will be reported by vessel for the previous quarter. These will be reported using 30-minute square Statlont 21 B Forms or magnetic tape, computer cards or printouts for all species and gear types.

Vessel logbook data is to be available for selected, specific joint assessment studies. The collection of samples, specified in 2. below, should also be annotated in the logbook.

b. Pacific Coast

(1) Statistical Information Requirements for Gulf of Alaska Trawl Fisheries Fishery Data: Poland shall report by May 30 of the following year annual catch and effort statistics, as follows: Effort in hours trawled, by vessel class, by gear type, by month, by ½° Latitude x 1° Longitude statistical area; Catch in metric tons, by vessel class, by gear type, by month, by ½° Latitude x 1° Longitude statistical area, by the following species groupings:

Rocksole
Flathead sole
Arrowtooth flounder
Other flounders
Pacific ocean perch
Other rockfishes
Pacific cod
Sablefish
Alaska pollock
Atka mackerel
Any other species taken in excess of 1,000 mt
Other fishes

In addition to the annual statistical report above, Poland will report by the end of the following month, provisional monthly fishery information as follows:

Effort in vessel-days on the grounds by vessel class; and Catch in metric tons of flounders, rockfishes, cod, pollock, sablefish, Atka mackerel, and others, for each of the following statistical areas of the International North Pacific Fisheries Commission (INPFC):

Charlotte
Southeastern
Yakutat
Kodiak
Chirikof
Shumagin

(2) Statistical Information Requirements for the Pacific Hake Fisheries Fishery Data: Poland shall report by May 30 of the following year annual catch and effort statistics, as follows: Effort in hours trawled, by vessel class, by gear type, by month, by ½° Latitude x 1° Longitude statistical area, Catch in metric tons, by vessel class, by gear type, by month, by ½° Latitude x 1° Longitude statistical area, by the following groupings:

Hake
Jack mackerel
Pacific ocean perch
Other rockfishes
Sablefish
Dover sole
Other flounders
Anchovies
Herring
Any other species taken in excess of 1,000 mt
Other fishes

In addition to the annual statistical report above, Poland will report by the end of the following month, provisional monthly fishery information as follows: Effort in vessel-days on the grounds by vessel class; and Catch in metric tons of hake, jack mackerel, rockfishes, flounders, and others, for each of the following statistical areas of the INPFC:

Conception
Monterey
Eureka
Columbia
Vancouver (including that portion off Canada)

2. Procedures for Scientific Samples

a. Atlantic Coast

(1) Length-age composition samples

(a) Samples should be taken separately for each gear type (e.g., bottom trawl, pelagic trawl, purse seine) and water layer (e.g., on the bottom, midwater level) combination every month for which fishing is pursued by 30-minute square areas throughout the agreement region. One sample should be taken for every 1,000 tons or fraction thereof within the above categories.

(b) Data to be recorded for each sample:

Vessel classification
Method of fishing; e.g., pelagic
Specific type of trawl, including reference to its construction or actual scale drawing
Mesh sizes
Tonnage of the species sampled in the trawl haul
Total weight of the fish sampled
Time of day of haul
Date
Latitude and longitude of haul

(c) Sampling procedures

(i) Species for which the catch is sorted

(a) From a single net haul take 4 random aliquots of approximately 50 fish each. (For species with less than 200 fish in a single trawl haul accumulate samples over trawl hauls until approximately 200 fish are taken.)

(b) Measure fork length for each fish to nearest cm, except for herring where the measurement will be the total length to the nearest cm below. Where other measurement systems are used appropriate conversion information must be supplied.

(c) Take a subsample of one fish from each cm interval and remove scales and otoliths as appropriate. Record the sex of mature individuals.

(ii) Species for which catch is not sorted

(a) From a single trawl take 2 random aliquots of approximately 30 kilos each.

(b) Sort to individual species (for "river herring" this means sorting to alewife *Alosa pseudoharengus* and blueback *A. aestivalis*).

(c) Measure fork length for each fish to nearest cm, except for herring where the measurement will be the total length to the nearest cm below. Where other measurement systems are used, appropriate conversion information must be supplied.

(d) Take a subsample of one fish from each cm interval and remove scales and otoliths as appropriate. Record the sex of mature individuals.

(2) Length-weight samples

Individuals of one sample of each principal species of fish (e.g., expected yearly catch in area of agreement of 500 or more tons), per International Commission for the Northwest Atlantic Fisheries (ICNAF) Division per month, should be weighed in grams and measured in millimeters. Each sample will contain 10 fish per centimeter interval. The length range of fish may be accumulated if necessary from small samples taken over several catches and days. With small fish, where weighing at sea of individuals is not accurate, appropriate numbers of fish of the same length class shall be weighed in aggregate. Sex shall be recorded for mature individuals.

b. Pacific Coast

Biological sampling by Poland will be conducted and measurements from sampling recorded according to sampling procedures developed and coordinated through consultations between United States and Polish scientists to answer specific and current research needs.

3. Amendment Procedure

The procedures in this Annex may be amended by agreement through an exchange of notes between the two Governments.

Agreed Minutes

The representatives of the Government of the United States and the Government of Poland have agreed to record the following in connection with the Agreement Between the Government of the United States of America and the Government of the Polish People's Republic Concerning Fisheries off the Coasts of the United States signed today:

1. With respect to Article III, paragraph 4 of the Agreement, signed today, the two Governments agreed to take note that the administration of the Agreement during the first year of its operation would be in some respects transitional in nature. The two Governments further noted that, taking this into account, the Government of the United States informed the Government of Poland that, without prejudice to the completion of certain internal procedures resulting in operative determinations in this regard, it had determined on a tentative and contingency basis that the portion of the allowable catch for certain fisheries that will not be harvested by United States fishing vessels and that could be made available to Poland during 1977 is expected to be as follows:

a. For the Northwest Atlantic Coast of the United States. Should the International Commission for the Northwest Atlantic Fisheries (ICNAF) cease to be effective with respect to the United States in 1977, the portion of the allowable catch that could be expected to be made available to Poland in 1977 would reflect the United States views offered at the December 1976 meeting of ICNAF.

b. For the Northeastern Pacific Coast of the United States. The United States takes note of paragraph 4 of the Agreed Minutes of the United States-Poland Pacific bilateral Agreement which expires December 31, 1976. Although an appropriate plan for the fishery for 1977 has not been approved in accordance with the internal procedures under the law of the United States, for 1977 the Government of the United States anticipates that, based on current stock assessments, the availability of the resource will result in lowered levels of fishing by all foreign nations, and that therefore Poland may expect that following completion of a plan and negotiations with others, its fishery will be reduced.

2. The Government of the United States, taking note of the Agreement, signed today, and the desirability for both Governments to voluntarily continue certain conservation and management measures pending the entry into force of said Agreement, desires to inform the Government of Poland of the following:

a. With regard to the former Agreement Between the Government of the United States of America and the Government of the Polish People's Republic Regarding Fisheries in the Western Region of the Middle Atlantic Ocean which entered into force July 1, 1975, and expired on June 30, 1976, the United States is prepared to:

(1) continue accepting requests from Polish fishing, fishery research and fishery support vessels to enter designated United States ports in accordance with Article 7 of that Agreement; and

(2) continue measures to minimize fishing gear conflicts between fishing vessels of the two countries in accordance with Article 9 of that Agreement;

(3) undertake the internal procedures necessary to continue to grant access to Polish fishing vessels to conduct loading operations in the waters described in Article 6 of that Agreement, and in accordance with the requirements in that Article.

b. The commitments and undertakings in paragraph a. above by the Government of the United States shall be assumed during the transitional period prior to entry into force of the Agreement, signed today, with the understanding that the Government of Poland intends to voluntarily abide by the fishing restrictions and conservation measures of Articles 2, 3, 4, 5, 9 and 11 of the former Agreement. It is further the understanding of the Government of the United States that should ICNAF cease to be effective with respect to either Government during the transitional period, the Government of Poland intends to apply in that portion of the Convention Area off the coast of the United States, the applicable catch, area, fishing gear and seasonal restrictions that would have applied under ICNAF.

c. With regard to the existing Agreement Between the Government of the United States of America and the Government of the Polish People's Republic Regarding Fisheries in the Northeastern Pacific Ocean off the Coast of the United States which entered into force on January 1, 1976, and expires on December 31, 1976, the Government of the United States is prepared to continue measures to minimize gear conflicts between fishing vessels of the two countries in accordance with Article 7 of that Agreement.

d. The commitments in paragraph c. above by the Government of the United States shall be assumed during the transitional period following December 31, 1976, with the understanding that the Government of Poland intends to voluntarily abide by fishing restrictions and conservation measures during the same period pursuant to Articles 4, 5, 6, 7 and 10 of the same Agreement.

3. It is understood by the representatives of both Governments that during 1977 Poland will be implementing a logbook system for collection of fishery statistics for the Northwest Atlantic suitable for computer processing. Full implementation of this program may not occur until 1978.

To facilitate meeting the statistical reporting requirements, the Government of the United States agrees to assist in the transfer of logbook records to Poland when requested to do so by Polish authorities.

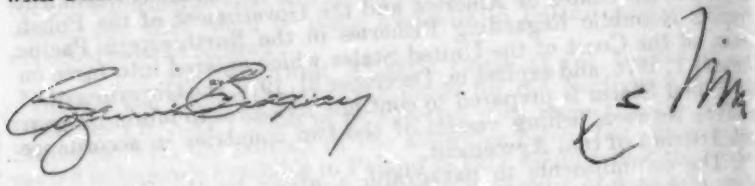
The Polish sampling program in the Atlantic area referred to in ANNEX III will consist of three teams of two sea samplers each. Teams will be assigned to the main season of the herring, mackerel and squid fisheries. Each team will be in the area approximately two to three months. During that time the samplers will work according to the guidelines outlined in the data and sampling requirements in ANNEX III of the Agreement. Use may be made of United States Coast Guard Cutters to facilitate transfers of samplers between fishing vessels when Coast Guard operations permit. Where observers are aboard Polish vessels, it is anticipated that they will assist in the sampling program.

By the end of 1977, when the first results from processing of the new logbook data will be available, this material and these statistical procedures will be reviewed at the next regularly scheduled meeting between scientists.

4. With respect to Article XII of the Agreement, both representatives, noting the desirability of cooperation among commercial fishing enterprises of the United States and Poland, and noting the efforts of the Joint American-Polish Trade Commission in furthering economic and commercial cooperation between the two countries, agreed that it would be appropriate to discuss during annual meetings of the Joint American-Polish Trade Commission the existing legal and regulatory framework under which such cooperation could take place.

5. The representatives of the Government of Poland noted that Poland may submit applications for permits under Article VI of the Agreement for flag vessels of other countries with which the United States has diplomatic relations, chartered by or under contract to a Polish fishing company.

The representative of the Government of the United States noted that such applications would be considered and reviewed in accordance with United States law.



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98th Congress, 1st Session - - - - - - - House Document No. 98-61

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS MAY 1983

COMMUNICATION

FROM

THE DIRECTOR, OFFICE OF MANAGEMENT AND BUDGET, EXECUTIVE OFFICE OF THE PRESIDENT

TRANSMITTING

A CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS OF BUDGET AUTHORITY AS OF MAY 1, 1983, PURSUANT TO SECTION 1014(e) OF PUBLIC LAW 93-344

MAY 11, 1983.—Referred to the Committee on Appropriations and ordered to be printed

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U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1983

11-011 O

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

MAY 10 1982

Honorable Thomas P. O'Neill
Speaker of the House of
Representatives
Washington, D.C. 20515

Dear Mr. Speaker:

In accordance with Executive Order 11845, I am transmitting the cumulative report required by Section 1014(e) of the Congressional Budget and Impoundment Control Act of 1974. In accordance with the Act, the report is also being transmitted to the Senate and will be published in the Federal Register.

Sincerely,

David A. Stockman

David A. Stockman
Director

Enclosures

IDENTICAL LETTER SENT TO THE PRESIDENT OF THE SENATE

CUMULATIVE REPORT ON RESCISSIONS AND DEFERRALS

May 1, 1983

This report is submitted in fulfillment of the requirements of Section 1014(e) of the Impoundment Control Act of 1974 (Public Law 93-344). Section 1014(e) provides for a monthly report listing all budget authority for this fiscal year with respect to which, as of the first day of the month, a special message has been transmitted to the Congress.

This report gives the status as of May 1, 1983 of 20 rescission proposals and 74 deferrals contained in the first seven special messages of FY 1983. These messages were transmitted to the Congress on October 1, and December 7, and 16, 1982, and January 5, February 1, March 9, and April 21, 1983.

Rescissions (Table A and Attachment A)

Twenty rescission proposals totaling $1,554 million are currently pending before the Congress. Table A summarizes the status of rescissions proposed by the President as of May 1, 1983, while Attachment A shows the history and status of each rescission proposed during FY 1983.

Deferrals (Table B and Attachment B)

As of May 1, 1983, $3,663.4 million in 1983 budget authority was being deferred from obligation and another $9.6 million in 1983 obligations was being deferred from expenditure. Attachment B shows the history and status of each deferral reported during FY 1983.

Information from special messages

The special messages containing information on the rescissions and the deferrals covered by the cumulative report are printed in the Federal Registers listed below:

Vol. 47, FR p. 44524, Thursday October 7, 1982
Vol. 47, FR p. 55602, Friday, December 10, 1982
Vol. 47, FR p. 57230, Wednesday, December 22, 1982
Vol. 48, FR p. 1266, Tuesday, January 11, 1983
Vol. 48, FR p. 5474, Friday, February 4, 1983
Vol. 48, FR p. 11244, Wednesday, March 16, 1983
Vol. 48, FR p. 18978, Tuesday, April 26, 1983

TABLE A

STATUS OF 1983 RESCISSIONS

	Amount (In millions of dollars)
Rescissions proposed by the President	$1,554.0
Accepted by the Congress	-0-
Rejected by the Congress	-0-
Pending before the Congress	$1,554.0 a

a. These rescission proposals are still considered to be pending before the Congress, even though the 45-day withholding period has expired.

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TABLE B

STATUS OF 1983 DEFERRALS

	Amount (In millions of dollars)
Deferrals proposed by the President	$13,454.2
Routine Executive releases (-$6393.5 million) and adjustments ($579.8 million) through May 1, 1983	-5,813.7
Overturned by the Congress	-3,967.6
Currently before the Congress	$ 3,672.9 a

a. This amount includes $9.6 million in outlays for a Department of the Treasury deferral (D83-16B).

Attachments

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1983

AS OF 08/03/83 19:08

AS OF MAY 1, 1983 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs								
Appalachian Regional Development programs	BA	R83- 3		15,133	2 1 83		15,133	4 13 83
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL	BA			15,133			15,133	
DEPARTMENT OF AGRICULTURE								
Agricultural Research Service								
Buildings and facilities	BA	R83- 3		1,927	2 1 83		1,927	4 13 83
Soil Conservation Service								
Watershed and flood prevention operations	BA	R83- 4		68,995	2 1 83		68,935	4 13 83
Resource conservation and development	BA	R83- 5		5,600	2 1 83		5,600	4 13 83
Agricultural Cooperative Service								
Salaries and expenses	BA	R83- 6		779	2 1 83		779	4 13 83
DEPARTMENT OF AGRICULTURE TOTAL	BA			77,301			77,301	
DEPARTMENT OF COMMERCE								

AS OF MAY 1, 1983 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
National Oceanic and Atmospheric Administration								
Construction	BA	R83- 1		2,000	12 16 82		2,000	3 25 83
DEPARTMENT OF COMMERCE TOTAL	BA			2,000			2,000	
DEPARTMENT OF EDUCATION								
Office of Elementary and Secondary Education								
Compensatory education for the disadvantaged	BA	R83- 7		133,925	2 1 83		133,925	4 13 83
School assistance in federally affected areas	BA	R83- 8		5,000	2 1 83		5,000	4 13 83
Special programs and populations	BA	R83- 9		56,630	2 1 83		56,630	4 13 83
Indian education	BA	R83- 10		16,128	2 1 83		16,128	4 13 83
Off. of Bilingual Educ. & Minority Lang. Affairs								
Bilingual eduation	BA	R83- 11		43,923	2 1 83		43,923	4 13 83
Office of Postsecondary Education								
Guaranteed student loans	BA	R83- 12		900,000	2 1 83		900,000	4 13 83
Higher and continuing education	BA	R83- 13		68,941	2 1 83		68,941	4 13 83

AS OF MAY 1, 1983 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
Office of Educational Research and Improvement								
Educational research and statistics	BX	R83- 14		6,225	2 1 83		6,225	4 13 83
DEPARTMENT OF EDUCATION TOTAL BA				1,230,381			1,230,381	
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Payments for oper. of low income housing proj	BA	R83- 15		69,000	2 1 83		69,000	4 13 83
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA				69,000			69,000	
DEPARTMENT OF THE INTERIOR								
National Park Service								
Construction	BX	R83- 16		63,600	2 1 83		63,600	4 13 83
DEPARTMENT OF THE INTERIOR TOTAL BA				63,600			63,600	
DEPARTMENT OF TRANSPORTATION								
Federal Highway Administration								
Federal-aid highways (trust fund)								

ATTACHMENT A - STATUS OF RESCISSIONS - FISCAL YEAR 1983

AS OF 05/03/83 18:09

AS OF MAY 1, 1983 AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		RESCISSION NUMBER	AMOUNT PREVIOUSLY CONSIDERED BY CONGRESS	AMOUNT CURRENTLY BEFORE THE CONGRESS	DATE OF MESSAGE MO DA YR	AMOUNT RESCINDED	AMOUNT MADE AVAILABLE	DATE MADE AVAILABLE MO DA YR
	BA	R83- 17		23,200	2 1 83		23,200	4 13 83
Coast Guard								
Natl recreat. boat. safety & facil. improv.	BA	R83- 18		5,000	2 1 83		5,000	4 13 83
DEPARTMENT OF TRANSPORTATION TOTAL BA				28,200			28,200	
OTHER INDEPENDENT AGENCIES								
Corporation for Public Broadcasting								
Public broadcasting fund	BA	R83- 19		45,000a	2 1 83			
OTHER INDEPENDENT AGENCIES TOTAL BA				45,000				
OFF-BUDGET FEDERAL ENTITIES								
Department of Agriculture								
Rural telephone bank	BA	R83- 20		23,400	2 1 83		23,400	4 13 83
OFF-BUDGET FEDERAL ENTITIES TOTAL BA				23,400			23,400	
TOTAL BA				1,994,018			1,800,018	

a. This is a rescission of FY 1985 funds.

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AS OF 08/04/83 09:34

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
FUNDS APPROPRIATED TO THE PRESIDENT								
Appalachian Regional Development Programs								
Appalachian regional development programs								
BA	D83- 40	10,000		2 1 83				10,000
International Security Assistance								
Foreign military sales credit								
BA	D83- 21	165,000		12 7 82				
BA	D83- 21A		1,010,000	2 1 83	-525,000			650,000
Economic support fund								
BA	D83- 22	554,720		12 7 82				
BA	D83- 22A		1,347,130	2 1 83	-1,715,998		551,150	737,004
Military assistance								
BA	D83- 29	11,650		12 7 82				
BA	D83- 29A		221,350	2 1 83	-207,650		14,650	40,000
International Development Assistance								
Functional development assistance program								
BA	D83- 1	8,129		10 1 82	-8,129			
FUNDS APPROPRIATED TO THE PRESIDENT TOTAL BA		749,499	2,578,480		-2,456,775		565,800	1,437,004
DEPARTMENT OF AGRICULTURE								
Agricultural Stabilization & Conservation Service								
Dairy and beekeeper indemnity programs								
BA	D83- 36	7,000		1 5 83		-7,000		
Soil Conservation Sevice								
Watershed and flood prevention operations								
BA	D83- 41	10,329		2 1 83				10,329
Animal and Plant Health Inspection Service								
Salaries and expenses								

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AS OF 08/04/83 08:34

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
	BA	D83- 34	2,134		12 16 82				
	BA	D83- 34A		4,066	2 1 83				6,200
Forest Service									
National forest system	BA	D83- 42	108,035		2 1 83	-21,022			87,013
Timber salvage sales	BA	D83- 2	10,002		10 1 82				
	BA	D83- 2A		3,105	2 1 83				13,107
Expenses, brush disposal	BA	D83- 3	44,575		10 1 82	-10,042		1,229	35,762
DEPARTMENT OF AGRICULTURE TOTAL BA			182,075	7,171		-31,064	-7,000	1,229	182,411
DEPARTMENT OF COMMERCE									
Economic Development Administration									
Economic development assistance programs	BA	D83- 43	181,900		2 1 83		-181,900		
Economic development revolving fund	BA	D83- 37	25,350		1 5 83	-25,350			
International Trade Administration									
Operations and administration	BA	D83- 44	20,100		2 1 83		-20,100		
Participation in U.S. expositions	BA	D83- 4	3,356		10 1 82	-571			2,785
National Oceanic and Atmospheric Administration									
Operations, research, and facilities	BA	D83- 71	2,865		4 21 83				2,865
Construction	BA	D83- 45	3,000		2 1 83				3,000

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AS OF 08/04/83 08:34

AMOUNTS IN THOUSANDS OF DOLLARS	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-83
AGENCY/BUREAU/ACCOUNT								
Promote and develop fishery products and research								
BA	D83- 5	30,619		10 1 82	-30,619			
National Bureau of Standards								
Scientific & technical research & services								6,500
BA	D83- 36	6,500		1 5 83				
DEPARTMENT OF COMMERCE								15,250
TOTAL BA		279,780			-96,540	-202,000		
DEPARTMENT OF DEFENSE-MILITARY								
Procurement								
Shipbuilding and conversion, Navy								
BA	D83- 46	2,400,000		2 1 83	-2,400,000			
Military Construction								
Military construction, all services								438,400
BA	D83- 6	64,063		10 1 82				
BA	D83- 6A		1,166,415	12 7 82	-792,078			
Family Housing, Defense								
Famil, housing, Defense								103,270
BA	D83- 23	181,840		12 7 82	-58,370			
DEPARTMENT OF DEFENSE-MILITARY								541,670
TOTAL BA		2,625,703	1,166,415		-3,250,448			
DEPARTMENT OF DEFENSE-CIVIL								
Corps of Engineers								
Construction, general								180,000
BA	D83- 47	180,000		2 1 83				
Wildlife Conservation, Military Reservations								

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AS OF 05/04/83 09:34

AMOUNTS IN THOUSANDS OF DOLLARS AGENC., BUREAU, ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-83
Wildlife conservation	BA	D83- 7	1,061		10 1 82	-6		-50a	1,005
DEPARTMENT OF DEFENSE-CIVIL TOTAL BA			181,061			-6		-50	181,005
DEPARTMENT OF ENERGY									
Atomic Energy Defense Activities									
Atomic energy defense activities	BA	D83- 70	50,000		3 9 83				50,000
Energy Programs									
Energy supply R&D-operating expenses	BA	D83- 72	15,226		4 21 83	-5,000a			10,226
Energy supply R&D-plant and capital equip	BA	D83- 4e	91,107		2 1 83	-28,595			62,512
Fossil energy research and development	BA	D83- 8	20,136		10 1 82				5,000
	CA	D83- 8A		b	2 1 83	-15,136			8,750
	BA	D83- 73	8,750		4 21 83				
Fossil energy, construction	BA	D83- 49	20,000		2 1 83				26,000
	BA	D83- 49A		6,000	4 21 83				
Energy conservation	BA	D83- 24	22,803		12 7 82	-22,803			4,500
	BA	D83- 74	4,500		4 21 83				
Strategic Petroleum Reserve	BA	D83- 50	57,400		2 1 83		-57,400		
Departmental Administration									
Depart admin., operating expenses	BA	D83- 51	21,767		2 1 83				21,767
Depart admin., plant & capital equipment									

ATTACHMENT B - STATUS OF DEFERRALS

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY, BUREAU, ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 9-1-83
BA	083- 52	12,693		2 1 83				12,693
DEPARTMENT OF ENERGY TOTAL BA		324,382	6,000		-71,534	-97,400		201,448
DEPARTMENT OF HEALTH AND HUMAN SERVICES								
Alcohol, Drug Abuse & Mental Health Administration								
Construction & renovation, St. Elizabeths Hospital BA	083- 9	9,714		10 1 82				9,714
Office of Assistant Secretary for Health								
Special foreign currency program BA	083- 10	6,420		10 1 82				6,420
Social Security Administration								
Limitation on administrative expenses BA	083- 53	9,633		2 1 83				9,633
DEPARTMENT OF HEALTH AND HUMAN SERVICES TOTAL BA		25,767						25,767
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT								
Housing Programs								
Subsidized housing programs BA	083- 54	3,081,193		2 1 83		-3,081,193		
Payments for operation of low income housing BA	083- 30	150,000		12 7 82	-150,000			
Community Planning and Development								
Community development grants BA	083- 31	221,000		12 7 82	-221,000			
Urban development action grants								

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AS OF 08/04/83 09:34

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-83
	BA	D83- 32	234,000		12 7 82				
	BA	D83- 32A		10,000	1 5 83		-244,000		
Urban homesteading	BA	D83- 33	8,000		12 7 82	-8,000			
DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT TOTAL BA			3,694,153	10,000		-279,000	-3,325,153		
DEPARTMENT OF THE INTERIOR									
Office of Water Research & Technology									
Salaries and expenses	BA	D83- 25	2,545		12 7 82	-2,545			
National Park Service									
Land acquisition and state assistance	BA	D83- 11	30,000		10 1 82				33,000
	BA	D83- 11A		3,000	2 1 83				
Minerals Management Service									
Payments from proceeds, sale of water	BA	D83- 29	48		1 5 83				48
Office of Territorial Affairs									
Administration of territories	BA	D83- 55	3,188		2 1 83				3,188
DEPARTMENT OF THE INTERIOR TOTAL BA			35,781	3,000		-2,545			36,236
DEPARTMENT OF JUSTICE									
Interagency Law Enforcement									
Organized crime drug enforcement	BA	D83- 56	13,656		2 1 83				13,656
Federal Prison System									

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AS OF 06/04/83 09:34

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-83
Buildings and facilities BA	D83- 35	16,330		12 16 82				16,330
DEPARTMENT OF JUSTICE TOTAL BA		29,986						29,986
DEPARTMENT OF STATE								
International Organizations and Conferences								
Contributions to international organizations BA	D83- 57	8,111		2 1 83				8,111
Other								
Emergency refugee and migration assistance fund BA	D83- 12	37,692		10 1 82			-1,844c	35,848
U.S. bilateral science and technology agreements BA	D83- 58	2,000		2 1 83				2,000
DEPARTMENT OF STATE TOTAL BA		47,803					-1,844	45,959
DEPARTMENT OF TRANSPORTATION								
Urban Mass Transportation Administration								
Urban mass capital fund BA	D83- 59	229,000		2 1 83		-229,000		
Federal Aviation Administration								500
Construction, Metropolitan Washington Airports BA	D83- 59	500		2 1 83				46
Civil supersonic aircraft development termination BA	D83- 13	46		10 1 82				
Facilities & equip. (Airport & airway trust fund) BA	D83- 14	158,485		10 1 82				

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AS OF 09/04/83 09:34

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-83
	BA	D83- 14A		566,751	2 1 83				725,236
Coast Guard									
Natl recreat boat safety & facil improv	BA	D83- 61	40,000		2 1 83				40,000
DEPARTMENT OF TRANSPORTATION TOTAL BA			428,031	566,751			-229,000		765,782
DEPARTMENT OF THE TREASURY									
Office of Revenue Sharing									
State and local government fiscal assistance fund	BA	D83- 15	106,474		10 1 82				
	BA	D83- 15A		305	12 7 82	-2,372		273	104,680
	O	D83- 16	7,909		10 1 82				
	O	D83- 16A		6,537	12 7 82			14,378	9,561
	O	D83- 16B		1,498	3 9 83	-20,761			
Federal Law Enforcement Training Center									
Construction	BA	D83- 17	3,078		10 1 82				3,078
DEPARTMENT OF THE TREASURY TOTAL BA			109,552	305		-2,372		273	107,758
TOTAL O			7,909	8,035		-20,761		14,378	9,561
NATIONAL AERONAUTICS & SPACE ADMINISTRATION									
Research and development	BA	D83- 26	34,500		12 7 82				34,500

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT	DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-83
VETERANS ADMINISTRATION								
Construction, major projects								4,000
BA	D83- 27	4,000		12 7 82				
OTHER INDEPENDENT AGENCIES								
District of Columbia								
Loans to DC for capital investment								
BA	D83- 18	38,832		10 1 82	-38,832			
Interstate Commission on the Potomac River Basin								
Contrib. to Interst. Comm. on Potomac Riv. Basin								
BA	D83- 28	12		12 7 82	-12			
Pennsylvania Avenue Development Corporation								
Land acquisition and development fund								22,358
BA	D83- 19	17,949		10 1 82				
BA	D83- 19A		4,409	12 16 82				
Railroad Retirement Board								
Milwaukee railroad restructuring, administration								490
BA	D83- 20	240		10 1 82				
BA	D83- 20A		250	2 1 83				
Small Business Administration								
Business loan and investment fund								
BA	D83- 62	143,000		2 1 83		-143,000		
Suret. bond guarantees revolving fund								
BA	D83- 63	3,000		2 1 83		-3,000		
Pollu. cont. equip. contract guar. revolv.								
BA	D83- 64	1,000		2 1 83		-1,000		
Motor Carrier Ratemaking Study Commission								

ATTACHMENT B - STATUS OF DEFERRALS - FISCAL YEAR 1983

AS OF 05/04/83 09:34

AMOUNTS IN THOUSANDS OF DOLLARS AGENCY/BUREAU/ACCOUNT		DEFERRAL NUMBER	AMOUNT TRANSMITTED ORIGINAL REQUEST	AMOUNT TRANSMITTED SUBSEQUENT CHANGE	DATE OF MESSAGE MO DA YR	CUMULATIVE OMB /AGENCY RELEASES	CONGRESSIONALLY REQUIRED RELEASES	CUMULATIVE ADJUSTMENTS	AMOUNT DEFERRED AS OF 5-1-83
Salaries and Expenses	BA	083- 66	282		2 1 83				282
Tennessee Valley Authority									
Tennessee Valley Authority fund	BA	083- 68	47,271		2 1 83				47,271
United States Information Agency									
Salaries and expenses (spec. for. curr. prog.)	BA	083- 67	1,344		2 1 83				1,344
Acquis. and construction of radio facilities	BA	083- 68	12,437		2 1 83				12,437
United States Railway Association									
Payments for purchase of Conrail securities	BA	083- 59	84,000		2 1 83	-83,600			400
OTHER INDEPENDENT AGENCIES TOTAL BA			249,387	4,659		-122,444	-147,000		84,582
TOTAL BA			9,095,450	4,342,781		-6,372,728	-3,967,553	565,408	3,663,358
TOTAL O			7,909	8,035		-20,761		14,378	9,561

a. This amount was released prior to transmittal of the special message reporting the withholding of $15,226,000.

b. This revision is a technical adjustment that did not increase the amount deferred.

c. This adjustment is being made to reflect actual unobligated balances available on October 1, 1982. All unobligated balances are being withheld from obligation.

98th Congress, 1st Session - - - - - - - House Document No. 98-62

SUPPLEMENTAL APPROPRIATIONS

COMMUNICATION

FROM

THE PRESIDENT OF THE UNITED STATES

TRANSMITTING

PROPOSED SUPPLEMENTAL APPROPRIATIONS FOR THE FISCAL YEAR 1983 AND AMENDMENTS TO THE REQUEST FOR APPROPRIATIONS FOR FISCAL YEAR 1983

MAY 17, 1983.—Referred to the Committee on Appropriations and ordered to be printed

U.S. GOVERNMENT PRINTING OFFICE
WASHINGTON : 1983

11-011 O

THE WHITE HOUSE,
Washington, D.C., May 17, 1983.

The SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: I ask the Congress to consider requests for supplemental appropriations for fiscal year 1983 in the amount of $196,686,000 and amendments reducing the request for appropriations for fiscal year 1984 by $946,000.

The details of these proposals are set forth in the enclosed letter from the Director of the Office of Management and Budget. I concur with his comments and observations.

Respectfully,

RONALD REAGAN.

Enclosures.

Estimate No. 06
98th Congress, 1st Session

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
WASHINGTON, D.C. 20503

May 17, 1983

The President

The White House

Sir:

I have the honor to submit for your consideration requests for supplemental appropriations for the fiscal year 1983 in the amount of $196,686,000 and amendments reducing the request for appropriations for fiscal year 1984 by $946,000.

I have carefully reviewed the proposals contained in this document and am satisifed that these requests are necessary at this time. I recommend, therefore, that these proposals be transmitted to the Congress.

Respectfully,

David A. Stockman
Director

Enclosures

DEPARTMENT OF COMMERCE
ECONOMIC DEVELOPMENT ADMINISTRATION

Salaries and Expenses

For an additional amount for "Salaries and expenses", $1,851,000, to be derived by transfer from "Economic development assistance programs".

This supplemental appropriation would provide funds for the additional administrative costs required by the $300 million Congressional increase to the Economic Development Assistance Program. This proposal would increase 1983 outlays by $1.9 million.

DEPARTMENT OF DEFENSE - MILITARY

1984 Budget Appendix Page	Heading	1984 Budget Request	1984 Proposed Amendment	1984 Revised Request
	PROCUREMENT			
I-G22	Other procurement, Army	$5,362,870,000	-$2,993,000	$5,359,877,000
I-G27	Other procurement, Navy	5,001,838,000	- 2,837,000	4,999,001,000
I-G30	Missile procurement, Air Force	8,570,834,000	- 6,704,000	8,564,130,000
I-G31	Other procurement, Air Force	7,626,302,000	7,610,000	7,633,912,000
	RESEARCH, DEVELOPMENT, TEST, AND EVALUATION			
I-G36	Research, development, test, and evaluation, Air Force	13,652,273,000	10,924,000	13,663,197,000
I-G39	Research, development, test, and evaluation, Defense Agencies	2,939,900,000	-6,000,000	2,933,900,000

These proposals would provide additional funds for classified activities in the Department of Defense. The proposed increases would be offset by reductions to lower priority programs within the Department. The net effect of these proposals would be to increase outlays by $8.4 million in 1984.

DEPARTMENT OF DEFENSE - MILITARY

General Provisions

The amount that may be transferred pursuant to Section 732 of the Department of Defense Appropriation Act, 1983, is hereby increased to $2,200,000,000.

This proposal would increase 1983 appropriation transfer authority from $1.2 billion to $2.2 billion. This proposal would not affect outlays.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

FOOD AND DRUG ADMINISTRATION

STANDARD LEVEL USER CHARGES

For an additional amount for "Standard level user charges", $500,000 to be derived by transfer from "Food and Drug Administration, Salaries and expenses."

This supplemental request provides for an appropriation transfer to pay the increased amount required by the General Services Administration for Standard Level User Charges. This increase was not included in the 1983 appropriation and is based on actual 1982 charges. This proposal would not affect budget outlays.

Department of Health and Human Services
National Institutes of Health
General Provisions

In the appropriation language under the above heading for the fiscal year 1983 add the following new general provision:

The Secretary of Health and Human Services may transfer to any account or combination of accounts under the heading "National Institutes of Health" in this title not more than 12 percent, 21 percent, and 13 percent from the accounts entitled "Research Resources", "John E. Fogarty International Center for Advanced Study in the Health Sciences", and "Buildings and Facilities", respectively; and not more than 1 percent of the amount appropriated to any other account appearing under such heading, except that no account shall be augmented under this section by more than 4 percent.

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-K54	General Provisions	---	language	---

Add the following general provision immediately following general provision Sec. 207:

Sec. 208 The Secretary of Health and Human Services may transfer to any account or combination of accounts under the heading "National Institutes of Health" in this title not more than 12 percent, 21 percent, and 13 percent from the accounts entitled "Research Resources", "John E. Fogarty International Center for Advanced Study in the Health Sciences", and "Buildings and Facilities", respectively; and not more than 1 percent of the amount appropriated to any other account appearing under such heading, except that no account shall be augmented under this section by more than 4 percent.

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This general provision language would allow the National Institutes of Health to transfer funds among accounts in order to support 5,000 new and competing research project grants in 1984 within the resources available in the 1984 budget request. This proposal would not affect outlays.

DEPARTMENT OF JUSTICE

General Administration

Working Capital Fund

For additional requirements of the "Working capital fund", $900,000 to be derived from current operating income.

The proposed language would permit use of operating revenue to meet capital improvement costs. This change is necessary to meet unforeseen repairs of the existing Justice Computer Center without requiring an additional appropriation for the Capital account. This proposal would not affect 1983 outlays.

Legal Activities

Salaries and Expenses, General Legal Activities

For an additional amount for "Salaries and expenses, General Legal Activities", $5,211,000 of which not to exceed $3,800,000 for asbestos litigation support contracts shall remain available until September 30, 1984.

This supplemental would provide funds for the Civil Division to conduct asbestos litigation, and for computer and microfilming support services to screen, abstract, record and utilize asbestos-related documentary and evidentiary records. This proposal would increase 1983 outlays by $5.1 million.

Salaries and Expenses, United States Attorneys and Marshals

For an additional amount for "Salaries and expenses, United States Attorneys and Marshals", $5,992,000 of which $561,000 shall be derived by transfer from "Salaries and expenses, General Legal Activities" and $231,000 shall be derived by transfer from "Salaries and expenses, Antitrust Division".

This supplemental would provide funds for the United States Attorneys to expand litigation efforts and would enable the United States Marshals to: (1) fund the costs of specific details requiring extraordinary amounts of security; and (2) provide for the cost of maintenance, storage and disposal of assets and property seized by Federal law enforcement organizations and provide the additional staffing required to manage and dispose of seized property assets. This proposal would increase 1983 outlays by $5.9 million.

Support of United States Prisoners

For an additional amount for "Support of United States Prisoners", $1,500,000.

This supplemental would provide for the increased cost of housing unsentenced Federal prisoners in contract jail facilities. This proposal would increase 1983 outlays by $1.5 million

Salaries and Expenses, Community Relations Service

Funds advanced to "Salaries and expenses, Community Relations Service" shall be available until expended to make payments in advance for grants, contracts, and reimbursable agreements and other expenses necessary under Section 501(c) of the Refugee Education Assistance Act of 1980, Public Law 96-422, for the processing, care, maintenance, security, transportation, and reception and placement in the United States of Cuban and Haitian entrants.

The proposed appropriation language would provide for the transfer of the funds and responsibilities for the 501(c) Cuban/Haitian-entrant related activities from the Immigration and Naturalization Service's Reception Processing and Care program to the Community Relations Service. This proposal would not affect outlays.

Interagency Law Enforcement

Organized Crime Drug Enforcement

Of funds available under the above heading, $9,619,000 for undercover operations shall remain available until September 30, 1984.

This proposed language would extend the availability of funds for undercover operations in order that on-going investigations may continue without interruption. This proposal would decrease 1983 outlays by $3.0 million.

Federal Bureau of Investigation

Salaries and Expenses

For an additional amount for "Salaries and expenses", $1,000,000.

This supplemental request would provide funds for technical support operations and would increase 1983 outlays by $500 thousand.

Salaries and Expenses

For an additional amount for "Salaries and expenses", $300,000.

This proposed supplemental would provide funds to meet the on-going requirements of the South Florida Task Force and would increase 1983 outlays by $285 thousand.

Immigration and Naturalization Service

Salaries and Expenses

Of funds available under this heading $27,177,000 for work under Section 501(c) of the Refugee Education Assistance Act shall remain available until expended.

This appropriation language would authorize the Department of Justice to carry out processing, care and maintenance activities associated with Title V of the Refugee Education Assistance Act for all Cuban and Haitian entrants including those with legally enforceable final orders of exclusion or deportation where removal has not been practicable. By Executive Order 12341, the responsibility for administering Title V of the Refugee Education Assistance Act was placed within the Department of Justice. This activity was formerly performed by the Cuban/Haitian Task Force under the Department of Health and Human Services. During the transfer of responsibility, appropriation language authorizing the carry-over of unobligated funds under Section 501(c) of the Act was inadvertantly omitted. This appropriation language would rectify this error by authorizing the carry-over of unobligated funds from 1983 to subsequent fiscal years to cover expenses necessary under Section 501(c) of the Refugee Education Assistance Act of 1980, as was originally intended. This proposal would not affect outlays.

Federal Prison System

Salaries and Expenses

For an additional amount for "Salaries and expenses, Federal Prison System", $3,734,000.

This supplemental funding would support an average daily population of 29,200 (1,300 over previous projection) and reduce institution overcrowding through the expansion of Contract Detention and Contract Community Treatment Center Programs. This proposal would increase outlays by $3.1 million.

DEPARTMENT OF STATE

Administration of Foreign Affairs

Salaries and Expenses

For an additional amount for "Salaries and expenses", $7,985,000 to remain available until September 30, 1984.

Acquisition, Operation, and Maintenance of Buildings Abroad

For an additional amount for "Acquisition, operation, and maintenance of buildings abroad", $22,256,000 to remain available until expended.

This request would provide funds to meet expenses resulting from the bombing of the U.S. Embassy in Beirut, Lebanon. These funds would provide for the continuation of State Department operations in Beirut and the construction of a new, permanent chancery building.

Board for International Broadcasting

1984 Budget Appendix Page	Heading	1983 Request Pending	1983 Proposed Amendment	1983 Revised Request
III-21	Grants and expenses	$29,840,000	-$2,500,000 and language	$27,340,000
	(In the appropriation language under the above heading delete $29,840,000 and insert in lieu thereof $27,340,000. Any amount appropriated to the Board for International Broadcasting which, because of upward fluctuations in foreign currency exchange rates, is in excess of the amount necessary to maintain the budgeted level of operation for RFE/RL, Incorporated, shall be available until expended for the same purpose as amounts appropriated pursuant to section 8(a)(2) of the Board for International Broadcasting Act of 1973, as amended (22 U.S.C. 2871-2879).)			

1984 Budget Appendix Page	Heading	1984 Request Pending	1984 Proposed Amendment	1984 Revised Request
I-V6	Grants and expenses	$115,702,000	-$946,000 and language	$114,756,000
	(Insert the appropriation language that follows immediately after "representation expenses.":) Any amount appropriated to the Board for International Broadcasting which, because of upward fluctuations in foreign currency exchange rates, is in excess of the amount necessary to maintain the budgeted level of operation for RFE/RL, Incorporated, shall be available until expended for the same purpose as amounts appropriated pursuant to section 8(a)(2) of the Board for International Broadcasting Act of 1973, as amended (22 U.S.C. 2871-2879).			

These amendments reflect the reduced requirements for Radio Marti and would reduce outlays by $2.5 million and $946 thousand respectively. This proposal also would make foreign exchange rate gains available for possible future year exchange rate losses, thus reducing the likelihood of future supplemental requests resulting from such losses.

SMALL BUSINESS ADMINISTRATION
BUSINESS LOAN AND INVESTMENT FUND

For additional capital for the "Business Loan and Investment Fund, "$152,000,000 to remain available without fiscal year limitation.

This proposed supplemental appropriation would provide the necessary funds to honor requests for the purchase of guaranteed loans. The supplemental would also provide for a shortfall in meeting the agency debt collection target. This proposal would increase 1983 outlays by $152 million.